



RRU

*Review
Comment
Communicate*



Improving Regulations and Rulemaking



JUNE 1999

State of California
Gray Davis, Governor

California Trade and Commerce Agency
Lon Hatamiya, Secretary



Contents

I. INTRODUCTION	1
II. WORKLOAD AND PERFORMANCE	3
Proposed Regulations	3
RRU Reviews	4
Tracking Regulations	4
Proposed Actions and Regulations	4
“Open” Rulemaking Records	5
Diversity Adds Complexity	5
Working With Regulators and Regulated Parties	6
Maintaining Excellence	6
III. ACCOMPLISHMENTS	8
Contributions on Specific Regulations	8
Contributions to the Rulemaking Process	9
The Economic and Fiscal Impact Statement (STD. 399)	9
Assisting Regulated Parties	10
Using Technology to Improve Rulemaking	10
Outreach Efforts	11
Assisting State Agencies	11
Rulemaking Problems and Solutions	12
IV. RRU FINDINGS ON RULEMAKING PRACTICES	13
Tracking Each Regulatory Proposal	13
Contact Person Issues	14
The Economic and Fiscal Impact Statement	14
Small Business Impacts	15
Writing in Plain English	16
Rulemaking Information on the Internet	16
Public Events on Proposed Regulations	17
Delivery of Comments	17
Asymmetries in the Rulemaking Process	17
Determining Regulatory Actions	18
Accessing the Final Statement of Reasons (FSOR)	18
The Participation of Impacted Parties	18

Contents

V. APPENDICES:

A. Examples of RRU Contributions on Specific Proposals	A-1
B. Number of Agencies Proposing Regulations: 1996 Through 1998	B-1
C. California Rulemaking Process Flow Chart	C-1
D. Economic and Fiscal Impact Statement (STD. 399)	
The STD. 399 Form	D-1
STD. 399 Guidelines	D-5
Flow Chart: The STD. 399 Process	D-18

I. INTRODUCTION



Constructive regulation is a service that government can and should perform, since thoughtful regulation can address serious problems not solved by private markets. However, there is major concern amongst businesses and other regulated parties, as well as the Governor and the Legislature, about excessive or poorly designed regulations. Such regulations can disrupt the economy and create burdens on the private sector that reduce economic growth, productivity, and job creation without providing commensurate benefits. These economic impacts reduce the competitiveness of California, and ultimately affect state revenues by reducing personal income, sales, and business income that are the basis for most tax collections.

One of the keys to developing and imposing constructive regulations is to fully consider the costs and benefits of such government involvement. The consideration of economic factors has too often been lacking during the creation and implementation of regulations. Numerous studies, by a wide range of groups and individuals within and outside of government, have identified this and other regulatory problems. The problems can be classified into four general issues: The cost of regulations; the complexity of regulations; impacts on state competitiveness; and added federal burdens.

Note: The regulatory process is also referred to as the rulemaking process, and proposed regulatory actions are also referred to as proposed rulemakings.

Numerous statutes and Executive Orders have been passed in the last decade requiring State agencies to improve the information they provide on their proposed regulations. The Trade and Commerce Agency was authorized to evaluate the findings and determinations of any state agency that proposes to adopt regulations, and to submit written comments into the record of that agency as necessary (Gov-

ernment Code section 15363.6 [SB 1082, Chapter 418, 1993]). Factors to be reviewed include economic and cost impacts, business reporting requirements, alternatives analyses or other aspects of a proposed regulation that may affect the state's businesses, industries, economy, or job base.

To conduct these reviews, the Legislature approved five limited-term positions in the 1995-96 Budget Act to establish a Regulation Review Unit (RRU) in the Agency. Solid evidence of RRU effectiveness and successes led the Legislature to permanently establish the program effective July 1, 1998.

RRU is responsible for determining whether state agencies have adequately assessed the economic and business impacts of the regulations they are proposing, but does not prepare the economic analyses required of regulatory agencies proposing regulations. RRU conducts objective and balanced reviews, without supporting or opposing regulations. In addition to reviewing regulations and submitting comments, RRU works with state agencies and regulated parties to ensure the best possible approach when a regulation is needed. The program fills a void in the state rulemaking process, and does not duplicate the work of any other public or private organization.

RRU has discovered through direct experience that businesses and other regulated parties do not have the time or expertise to systematically monitor complex state regulations. Most potentially affected parties are not even aware of proposed regulations until contacted by RRU, and many indicate that they have never been contacted by a state agency regarding a proposed regulation. It is common for the rulemaking records of state agencies to have few, if any, public comments.

RRU attempts to address this situation through a variety of outreach efforts designed to increase communication between state agencies and the private sector.

This program report has been prepared to document the workload and effectiveness of RRU, and to document good and bad rulemaking practices found by RRU.

The balance of the report consists of three additional chapters. Chapter II (with related Appendices B-D) documents the overall workload and performance of RRU since its inception in December 1995. Chapter III discusses specific RRU accomplishments. The material shows how RRU involvement and written comments have resulted in numerous changes to proposed regulations that have saved regulated parties millions of dollars. (Also see Appendix A.) At the same time, the program has worked cooperatively with state agencies and the private sector to increase the effectiveness of the rulemaking process. Chapter IV contains RRU findings on state agency rulemaking practices, based upon more than 1800 regulatory proposals examined by RRU staff. The findings are primarily directed towards policy makers for their information in formulating state regulatory policies.

II. WORKLOAD AND PERFORMANCE



The review function of the Regulation Review Unit (RRU) is unique in California. No other public or private entity looks at regulatory proposals from the economic and business impact perspective. In addition, no other public or private entity has the expertise, contacts, or resources to determine whether the economic and business impacts of proposed regulations have been fully and accurately assessed.

A regulation can impact businesses, individuals, and/or the economy in a variety of ways. The following are just a few general examples:

Costs to business can include: fees and assessments; compliance costs, such as the hiring of consultants, the use of staff time, and new equipment and supply purchases; and opportunity costs. The last cost category is less obvious and measurable than the other categories, but a very real expense to business owners. Essentially, opportunity costs are the value of what would have been earned from the time and resources used to comply with a regulation.

Costs to individuals, and particularly self-employed persons, may be similar to those for businesses. In addition, individuals may be forced to pay higher product prices, or be faced with a reduction in product choices, as a result of regulations.

The cost to the private economy can include changes in the size and structure of regulated industries and a general loss of California competitiveness relative to other states and countries. It is not known how many businesses do not get started, or the number or people who are not employed, due to excessive or poorly designed regulations.

Proposed Regulations

Most of the RRU workload occurs during the 45-day public comment period required under the California's Administrative Procedures Act (APA). The public comment period begins on the date a notice of proposed rulemaking is published in the *California Regulatory Notice Register (Register)*, and ends on the date specified in the *Register* (See Appendix C for a flow chart of the rulemaking process).

RRU begins its examination of the regulation, and supporting documents, when the regulation has been noticed in the *Register*. RRU normally examines the proposed text, the Economic and Fiscal Impact Statement (STD.399) and the Initial Statement of Reasons (ISOR) to determine whether the regulations fall within the RRU criteria for review. If the regulations do not appear to affect the economy, business, job base or other aspects of the private sector, RRU ends its work without further review or analysis. Regulations that do not directly affect the private sector typically involve government operations, conflict of interest codes, regulation repeals, and technical matters or legal issues that are outside the legal mandates and responsibilities of RRU.

All proposals must be examined, because there is no way to identify in advance only those that require an in-depth review. The impact of regulations to an economy are complex and subtle. Potential impacts often cannot be identified without reading the details of the proposal. In addition, expertise among agencies varies as to their ability to identify and measure all impacts of a regulation. Expertise may even vary within a single agency. An agency may have several proposed regulations that necessitate comments by RRU, and others that do not require any comments.

RRU Reviews

When there are potential economic impacts, RRU conducts an in-depth review. These reviews assess whether economic impacts have been fully considered by the proposing agency, and whether reasonable alternatives have been discussed with affected parties. RRU relies on a wide range of sources to obtain impact information and to gain a broader perspective on the proposed regulation, including: 1) discussions with the agency proposing the regulations; 2) reviews of the agency rulemaking file — which is required to contain all research data, reports, surveys, and other supporting information; 3) outreach to businesses, associations, and others potentially impacted by the regulation; 4) contact with interested or knowledgeable parties; and 5) review of business journals, Internet sites and other business and economic reference materials.

The Economic and Fiscal Impact Statement, form STD. 399, assists RRU and affected parties in identifying impacts. The form provides a concise summary of the parties affected, the costs and benefits of the proposal, and any alternatives considered. Appendix D contains a copy of the STD. 399 form and instructions, along with a flow chart of how the form is integrated into the rulemaking process.

Written comments are prepared and submitted to the regulatory agency by RRU, when RRU finds that a proposal may have significant impacts that have not been addressed, less burdensome alternatives that should be considered, or other significant issues.

Tracking Regulations

RRU staff have developed a computer system to track the progress of each individual regulation from its notice in the *Register*, through the 45-day comment period, to the eventual approval or rejection by Office of Administrative Law (OAL). RRU workload statistics and many other program records are derived from this tracking system. Another intent of the tracking system was to fill a void in the State regulatory process, since no similar tracking tool existed before RRU.

Although the comment period is 45-days, the rulemaking process can take up to a year. However, multiple adoption of emergency regulations can even extend this period. State agencies have one year, from the time a proposal is noticed in the *Register*, to submit a rulemaking record to OAL for approval. A month or more may then pass before OAL either approves and files the regulation with the Secretary of State, or disapproves it. At any one time, RRU is tracking hundreds of regulations awaiting comments from different parties, or some other action.

Proposed Actions and Regulations

Since RRU became operational in December 1995, through 1998, the program has examined 1,816 regulatory proposals (each of which normally include changes to numerous code sections) and over 60,000 pages of supporting documentation. Of the 1,816 proposals, RRU performed in-depth reviews on 1,042 of those, and provided written comments or other beneficial input on 262 proposals. (Approximately one fourth of all regulations reviewed by RRU resulted in written comments or some other RRU action.)

The share of regulations reviewed by RRU has generally increased from slightly more than half in 1996 to two-thirds in 1998. A combination of factors appear to be responsible for the increase. Regulations tend to reflect society at-large, and are probably getting more complex over time. Thus they may have more potential impacts. Also, RRU has spent an extensive amount of time developing tools and skills for evaluating regulatory impacts. Therefore, RRU staff may be able to more accurately identify problems that may have been overlooked in the early days of the program.

Finally, RRU records indicate that regulatory proposals now appear to contain more individual regulations within each proposal. (Every separate California Code of Regulations (CCR) section that is changed in a proposed action is generally considered a separate regulation.) This trend may be the result of agencies trying to regulate less often.

Nevertheless, it has become important for RRU to not only track the number of rulemaking proposals, but also the number of regulations within each proposal. This practice provides a more representative picture of the RRU workload, and what regulated parties face. A single state regulatory proposal may contain numerous different regulations, and regulated parties must comply with each of those regulations. During 1998, for example, the number of regulations contained in each regulatory proposal ranged from one to about 100.

The preparation of each RRU written comment typically requires extensive research, analysis, and communications with both the regulating agency and impacted parties. In 1998, RRU submitted 95 written comments. This amount is significant, because each written comment can take as long as a week to compose. The RRU analyst must identify all the obvious (and sometimes not so obvious) problems, and present them to the agency in a clear and concise manner.

As a result of RRU comments, state agencies often make substantive or technical wording changes to their proposals, before submitting them to OAL for final approval. The revisions made by agencies reduce the economic impacts on regulated parties, while maintaining the goals of the original regulations. The revisions also help the state agency avoid the more costly alternative of making changes after a regulation is adopted.

“Open” Rulemaking Records

Monitoring and ultimately determining the outcome of regulations that have not been filed with the Office of Administrative Law takes up a significant amount of RRU staff time. This activity is time consuming, because the number of “open” rule making records – or proposed actions that have not been adopted, disapproved, or withdrawn continues to grow. For example, more than 150 of the regulatory actions proposed in 1997, or about one fourth, were still “open” as of December 1998. Those regulations were in addition to the more than 200 regulatory proposals in 1998 which were also “open” on that date.

The growing RRU workload involving “open” rulemaking records is partially due to the length of time given to state agencies to adopt regulations under the law. An agency has up to one year to submit its rulemaking record to OAL for approval, starting from the time the regulation is published in the *Register*. The number of rulemaking records that are still open also reflects a significant number of poorly written or ill-conceived regulations that had to be substantially amended or withdrawn. Compounding this problem, state agencies are not required to notify OAL, affected parties, RRU, or anyone else when they abandon or withdraw a regulatory proposal.

RRU spends a large amount of time and energy to contact state agencies regarding the final outcome of regulations they proposed. In some cases, RRU cannot obtain outcome information, even after numerous calls and letters to the state agency. Often, RRU discovers that the proposal was withdrawn or abandoned by the agency. For example, RRU inquired about the final outcome for 57 of the 663 regulations that were proposed in 1996. From those inquiries, it was found that about three-fifths of those were withdrawn or abandoned. Private sector participation in the rulemaking process, and ultimate compliance with agency rule, is undermined when regulated parties cannot determine the final outcome of proposed regulations.

Diversity Adds Complexity

More than 200 state agencies have the authority to propose regulations, and roughly half submit proposals in any given year. However, the agencies which actually submit proposals vary from year-to-year. In 1997, for example, RRU examined 573 regulatory proposals from 122 agencies that contained over 17,000 pages of supporting documents. In 1998, 121 agencies published 580 regulatory proposals, with about 23,000 pages of documentation. The number of agencies proposing regulations and the number of proposals in 1997 and 1998 were similar. However, the number of pages of documentation in 1998 increased by about one-third over that provided in 1997.



This may be the result of agencies' efforts to provide additional justification for their rulemaking, or the need to address increased public scrutiny. The increase may also reflect the increased complexity of proposed actions, as discussed earlier in this chapter.

The types of agencies submitting regulatory proposals are very diverse, ranging from the Accountancy Board to the Youthful Offender Parole Board. In addition, most agencies have their own policies and procedures for developing regulatory proposals, soliciting public input, and responding to comments. Working with such a large number of agencies, and internal agency practices, complicates the regulation review work of RRU.

Appendix B lists the state agencies that proposed regulations during 1996, 1997, and 1998.

Working With Regulators and Regulated Parties

RRU always contacts the state agency proposing regulations during the review process, and encourages them to contact RRU at any time with their questions or comments. Since the establishment of RRU in December 1995, interagency communication and cooperation have steadily increased. Regular RRU contact with the various agencies has given them a heightened awareness of the potential impacts of proposed regulations. Some agencies indicated to RRU that it was the first party to request a review of the agency rulemaking record, or to request the text and ISOR for proposed regulations. Many agencies now include RRU in their interested-party mailings on proposed regulatory actions, and automatically send the proposed text of their regulations, the Initial Statement of Reasons (ISOR), and the Economic and Fiscal Impact Statement (STD. 399).

To support and encourage agencies to accurately and completely assess the impacts of their proposals, RRU gives presentations to agency staff to explain the requirements of the Economic and Fiscal Impact Statement (STD. 399) and answer questions about the RRU role

in the rulemaking process. RRU oral presentations are supplemented by a Power Point visual display. RRU also meets with agency staff and representatives from the private sector to provide general information about the rulemaking process. (In addition, RRU encourages parties to contact OAL regarding the process.)

RRU contacts regulated and interested parties in the private sector on nearly every regulation that is reviewed. During such contacts, it is not unusual to find that many parties are unaware of proposed regulations that could potentially impact them. For this reason, RRU produced a leaflet describing its role and responsibilities and explaining how to contact state agencies to submit comments or obtain rulemaking information. The leaflet is regularly sent by RRU to parties that are contacted during the regulation review process, or when RRU staff attend regulatory hearings or related meetings. Approximately 200 printed copies have been sent to-date. Many more copies have been downloaded from the RRU Web site located at <http://commerce.ca.gov/regreview>.

Maintaining Excellence

The preceding sections describe the major aspects of the RRU workload. However there are numerous other areas RRU expends time and resources. For example, to ensure that the best review practices are used in California, RRU periodically monitors rulemaking activities in other states and federal agencies. The staff also review regulatory studies prepared by private organizations.

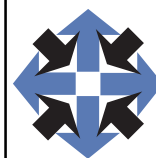
RRU was a member of the former National Association on Administrative Rules Review (NAARR), a professional organization established to help states and the private sector handle issues concerning the promulgation and oversight of administrative rules. RRU also provided information to NAARR for their annual Administrative Rules Review Directory and Survey. The National Association of Secretaries of State, Administrative Codes and Register Section, is continuing the regulation oversight role, and RRU will cooperate with this organization to monitor national regulatory trends.

Any effective state program requires the regular use of proven techniques. Therefore, RRU established standard practices and procedures that are documented in a continually-updated manual. These practices and procedures provide consistent guidance to each of the RRU staff, to ensure that regulation reviews are conducted in a uniform and objective manner. The manual is organized into numerous sections, each of which provides information and examples on the review process and other RRU tasks.

The following chapters more fully demonstrate RRU activities, accomplishments, and commitment to excellence.



III. ACCOMPLISHMENTS



RRU participation in the rulemaking process has had many beneficial outcomes for both the public and private sectors. RRU has submitted written comments or provided other beneficial input on about one out of every four of the regulatory proposals it has reviewed. RRU has identified potential economic impacts, encouraged agencies to utilize "Plain English" when writing regulations, and raised other issues such as the possibility of less burdensome alternatives. These comments have saved state agencies and the private sector time and money.

RRU reviews have also heightened agencies' awareness of the need to identify impacts and communicate with the private sector. For example, many agencies are now including rulemaking information on Web sites. RRU regularly works with state agencies to: discuss and evaluate proposals; minimize impacts on regulated parties; minimize uncertainty for regulatory agencies; and in general, encourage the best possible approach when a regulation is needed.

This chapter contains two general types of RRU accomplishments: contributions to improve specific regulations; and contributions to improve the rulemaking process. (Appendix A contains numerous examples of RRU contributions on individual regulations.)

Contributions on Specific Regulations

RRU comments on proposed regulations, and state agency actions in response to those comments, have already saved regulated parties millions of dollars. It is impossible to estimate the dollar savings with any precision, due to the absence of quantitative data from regulatory agencies. However, outside sources have identified numerous examples where RRU involvement in the rulemaking process resulted in significant reductions in unnecessary costs to the private sector.

RRU submitted 158 comment letters to state agencies proposing regulations during 1997 and 1998. Although the regulations that generated RRU comment letters were about one-fourth of the total reviewed, they were most complex and potentially burdensome regulations affecting the private sector.

As a result of comments submitted by RRU and other parties during the public comment period, agencies usually agreed to make substantive or technical wording changes to their proposals, before submitting them to OAL for approval. In some instances, all or part of the regulations were withdrawn or abandoned by the sponsoring state agency.

RRU is collecting information on the outcome of regulations reviewed. This information, combined with information provided by the private sector, shows significant potential dollar savings. These savings resulted from the number of regulatory amendments and withdrawals which ultimately lessened impacts on private parties. These savings also equate to saved tax dollars and therefore, to a more efficient and better state government.

Through its comments, RRU has identified potential economic impacts and raised other issues, such as the possibility of less burdensome alternatives. As a result, more state agencies have become aware of the benefits of discussing their proposals with RRU staff, and with knowledgeable and affected parties in the private sector.

The agencies have found that such consultations can save them time and money when they develop regulations. OAL estimated that it saves state agencies \$500,000 to \$2 million per year through their legal assistance. That assistance helps agencies avoid unnecessary revisions and re-submittals of their proposals, and possible lawsuits once the regulations are adopted.

Similarly, RRU found numerous errors and omissions in proposed regulations that saved agencies the cost of correcting those problems later in the rulemaking process, or after the regulations were adopted.

Appendix A contains numerous examples of RRU contributions on specific regulations. These examples were chosen to illustrate the breadth and scope of proposed regulations and their impacts, and to demonstrate how an objective analysis can have positive results for all concerned. The examples are listed chronologically according to their file number in the *California Regulatory Notice Register*.

Contributions to the Rulemaking Process

RRU conducts objective and balanced reviews, without supporting or opposing regulations. RRU fills a void in the state rulemaking process and seeks to improve the process by encouraging regulated and interested parties in the private sector to participate. As stated by State Senator Charles Calderon in a letter, addressed to the Senate, and dated March 15, 1996, "I believe it [RRU] is a critical function to ensure the credibility and integrity of the economic support for regulations."

The unbiased, objective reviews conducted by RRU are substantive, positive additions to the rulemaking process. For example, in 1997, four out of every five written comments from RRU resulted in changes to the applicable proposed regulations, prior to those regulations being submitted to the OAL for review and approval.

The Economic and Fiscal Impact Statement (STD. 399)

In addition to reviewing regulations and submitting comments, RRU works with state agencies and regulated parties to encourage the best possible approach when a regulation is needed. Executive Order W-144-97 required the development of an economic impact statement to be incorporated into the former Fiscal Impact Statement Form (STD. 399). RRU was

asked by the Governor's Office to develop the statement and the corresponding instructions. The revised STD. 399, renamed the Economic and Fiscal Impact Statement, requires agencies to indicate who will be affected by a regulation, the benefits and costs that will result, as well as the alternatives that were considered.

With the new form, state agencies now have a format to clearly document the private sector impacts of their proposals. In turn, regulated and interested parties are now able to more easily understand the effects of proposed regulations. The Executive Order also mandates that "...the economic impact statement shall be submitted to the Regulation Review Unit of the Trade and Commerce Agency, and all state agencies and departments shall respond to the Trade and Commerce Agency's comments." (Refer to Appendix D for a copy of the STD. 399 form, instructions, and a flowchart titled "The STD. 399 and the Rulemaking Process.")

The new STD. 399 has gained national attention, most recently from the American Enterprise Institute - Brookings (AEI-Brookings) Joint Center for Regulatory Studies. This research organization reviews regulatory trends and prepares an annual report on the effects of regulation. According to Robert Hahn, AEI - Brookings Joint Center Director "The real purpose [of the Center] is to keep the regulators – and the legislators who regulate the regulators – on their toes."

The Center released a September 1998 study, titled *How Changes in the Federal Register Can Help Regulatory Accountability*. Although the study focused on U.S. Government practices, it also noted California efforts to improve proposed regulations: "Presently some states like California, Pennsylvania and Michigan have a regulation summary form that each agency must complete. California provides a particularly good example. They have a four-page form that serves as a summary and must be in each rule's rulemaking record."

A November 1998 working paper by the Center focused on state regulatory reform efforts, and said the following about RRU and its work on the STD. 399 form and instructions:



"The Regulation Review Unit was established in December 1995, so it is too early to evaluate its long-term impact on the regulatory process. There are, however, some early examples of the unit's positive contributions to the process...the experience in California illustrates the potential benefits of holding regulators accountable by assigning an oversight function to an entity with economic expertise."

"The Unit [RRU] helps agencies decide which information the agencies should use for their analysis and include in the final report, and also is a resource to the agencies on the practical application of cost-benefit analysis ... The Economic and Fiscal Impact Statement therefore helps increase transparency and accountability in the regulatory process."

State Administrative Manual (SAM) Section 6680 requires that state agencies complete and submit the STD. 399 to RRU. In an effort to work cooperatively with state agencies, and provide information to regulated parties and interested parties, RRU has included the STD. 399 form and instructions on its Internet Web site. An analysis of the user sessions on the RRU Web site verifies that during the past year, the Web site was accessed over 4,200 times. Included in this number are more than 1,100 "downloads" of the STD. 399 form and its instructions. During the past year, RRU has also seen an increase in the number of state agencies who include their completed STD 399 in their rulemaking package.

Assisting Regulated Parties

One of the goals of RRU is to become an independent "channel" for regulated parties to voice their concerns and suggestions regarding the rulemaking process. By contacting regulated parties, who in turn contact agencies, RRU has helped private parties better understand the rulemaking process. Regular RRU contact with regulated parties and state agencies has positively impacted the rulemaking process in two ways:

- state agencies have gained increased sensitivity about the potential impacts of proposed regulations, and
- outreach to entities outside of government have provided successful personal, one-on-one communications that have helped restore private sector confidence in the process.

RRU has received positive feedback through its contacts with impacted parties. Several businesses have written letters to the Undersecretary of the Trade and Commerce Agency commenting on how the rulemaking process has been made less "bureaucratic" and more accessible through contact with RRU staff. A quote by the Vice President of the Automotive Chemical Manufacturers Council says it best, "The existence of an impartial broker of information within the California Government [RRU] will only lead to future successful negotiations between California's regulatory agencies and the affected industry groups. This of course will mean better regulations, and less headaches, for all involved."

The President and CEO of another California business wrote, "anything you can do to help moderate the current proposed [regulations] could make the difference in whether or not our company survives."

Using Technology to Improve Rulemaking

As stated earlier, RRU has developed a Web site on the Internet that not only provides information about RRU, but also provides the ability to read and download information about:

- the State rulemaking process;
- the STD. 399 form;
- instructions on how to complete the STD. 399 form;
- rulemaking developments, such as Executive Orders;
- links to other regulation-related sites.

RRU established the Web site to increase public and private sector awareness of the role of RRU in the regulatory process, and to allow regulated parties to communicate with RRU staff electronically. The Web site is located within the Trade and Commerce Agency site at <http://commerce.ca.gov/regreview>. In the past year, Web site statistics showed that the overwhelming majority of the users were from the private sector. Most of the remaining users were state regulatory agencies.

In addition to using technology to increase access to information on the regulatory process, RRU maintains a computer tracking system to monitor the size and characteristics of regulatory proposals and their outcomes. RRU has the only mechanism to identify and analyze trends of the rulemaking process. OAL and other state agencies do not have a tracking system that can easily track all proposals at all stages of the rulemaking process. With this tracking information, RRU has been able to:

- forecast workload and staffing needs;
- identify individual regulatory agency trends;
- identify issues that may need further review efforts;
- gain a better, broader perspective on the whole rulemaking process.

For example, with the RRU tracking system RRU can determine how many proposals were submitted to OAL in a given year, how many proposals required extensions to the original closing comment deadline, and how many proposals were ultimately filed with the Secretary of State's Office and codified in the California Code of Regulations (CCR).

Outreach Efforts

RRU contacts regulated and interested parties on nearly every regulation that is reviewed. During such contacts, it is not unusual to find that many parties are unaware of a proposed regulation that can potentially impact them. Many of those contacted are also unaware of the existence of RRU and the role it plays in the rulemaking process. For these reasons, RRU developed and produced an in-

formational leaflet, and a 1997 program report titled, *Improving Regulations and Rulemaking*.

Both of these documents describe the role and responsibilities of RRU, and explain how to contact state agencies to submit comments or obtain rulemaking information. The leaflet, "The Regulation Review Unit," is regularly sent by RRU to parties who are contacted during the regulation review process. The 1997 program report and leaflet are available to all interested parties on the RRU Web site, or by contacting the program.

Other RRU outreach efforts include conducting training seminars for regulatory agencies, attending public meetings on regulatory proposals, and meeting with regulatory agency staff. In 1998, RRU conducted two training presentations. Attendance for the two presentations consisted of dozens of representatives from over eight public agencies. In addition, RRU is conducting additional training presentations during 1999. RRU staff also attend numerous regulatory hearings and meet with a variety of industry representatives impacted by proposed regulations.

Assisting State Agencies

RRU has also helped agencies to improve their rulemaking procedures without submitting written comments. RRU provides assistance on regulatory proposals by:

- discussing suggested changes and techniques to improve the economic impact assessments;
- identifying errors and omissions in the proposed text or the Initial Statement of Reasons (ISOR);
- and in general, helping to ensure that the public receives the best possible information about the proposal.

Rulemaking Problems and Solutions

RRU has succeeded in making positive contributions to the state rulemaking process. This effort is continuing, as RRU pursues numerous issues still needing improvement. For example, one issue is the frequent lack of adherence to the law mandating the use of “Plain English.” Government Code Sections 11342 and 11346 mandate that state agencies, when adopting a regulation that affects small businesses, draft regulations in “Plain English”, or make available to the public a non-controlling plain English summary of any regulation that is too technical to write in plain English.

The next chapter will discuss this issue, and other RRU concerns involving state agency rulemaking practices that impact regulated parties.

Although state rulemaking requirements and procedures are delineated in the Administrative Procedure Act (APA), state agencies have a great deal of latitude regarding their rulemaking practices. In addition, practices continue to evolve in response to changing conditions, state agency initiatives, legislation and executive orders. For example, the Internet has emerged as a tool to send and receive information on proposed regulations, even though its use is not required by the APA.





IV. RRU FINDINGS ON RULEMAKING PRACTICES

RRU staff examined more than 1,800 regulatory proposals between December 1995 and December 1998. During that time, RRU observed state agency practices that improved the rulemaking process, as well as those that were contrary to the letter or spirit of rulemaking law. RRU written comments on individual regulatory proposals, as discussed in earlier chapters, provide detailed information about the problems with specific rulemakings. However, to get a broader picture of state practices, one would have to review all RRU comments and monitor the state regulatory process over time.

This chapter will summarize and report on state rulemaking practices that are affecting the quality of proposed regulations. It discusses rulemaking practices that make it difficult for regulated and interested parties to participate effectively in the rulemaking process. It also identifies some recommended improvements in the regulatory process. This information is primarily directed to policy makers, in the executive and legislative branches, for their consideration when formulating state regulatory policies. The findings are also for the use and information of state agencies, and particularly the two control agencies for proposed regulations --the Office of Administrative Law (OAL) and the Department of Finance. Although the control agencies have extensive rulemaking knowledge, it is hoped that the unique role of RRU provides an additional and beneficial perspective.

The following sections present specific RRU findings on state agency rulemaking practices, suggestions for improvements.

Tracking Each Regulatory Proposal

Under current rulemaking practices, there is no unique identifying number for each regulatory proposal. A regulatory agency may use its own unique code number, while OAL

uses at least two separate numbers to identify each proposal: the *Notice* file number listed in the *California Regulatory Notice Register (Register)*; and a second number when a complete rulemaking file is submitted by an agency. These different numbering systems make it difficult for RRU and others to follow regulations throughout the entire process. Regulated parties who are not familiar with the rulemaking process have an even more difficult time. They may not know that they must refer to different identifying numbers, depending upon the agency contacted and the status of the proposal.

RRU believes that each regulatory proposal published in the *Register* should have a unique identifying number that is permanently associated with that proposal. This number could be assigned when the annual rulemaking calendar is prepared. Such a numbering system would allow a proposal to be followed at any point in time, regardless of the status of the proposal. Possible status may include, pending within the sponsoring state agency; withdrawal by that agency; approval or disapproval by OAL; filed with the Secretary of State; or other situations.

In order to reach closure on each regulation, RRU believes that final action should also include formal notification from the agency when they withdraw or abandon a proposal. At a minimum, that notification should include some type of announcement published in the *Register*. The announcement could be as simple as a listing of all rulemaking records that closed during the week, and an explanation of a few words for the closing (e.g. approved by OAL, withdrawn by the state agency, one-year deadline reached, etc.).

Contact Person Issues

Government Code (GC) section 11346.5 (a)(13) states that the *Notice of Proposed Action (Notice)* shall include "The name and telephone number of the agency officer to whom inquiries concerning the proposed administrative action may be directed." This requirement of the APA is designed to ensure that regulated parties receive accurate information in a timely manner from a knowledgeable individual at the agency proposing the action. Despite the intent of the California Legislature, RRU has encountered numerous problems that impede and discourage public participation in the rulemaking process.

In some instances, the *Notice* provides the name of a contact person who is not directly associated with the writing of a regulation, such as a Regulations Coordinator. Consequently, regulated parties lose valuable time during the 45-day comment period tracking down a person who can answer detailed questions. The contact person in the *Notice* should be someone who has in-depth knowledge about the content of the proposed regulation. RRU also recommends that the contact person be someone who has been trained to be receptive to public comments and questions, and will encourage public participation in the rulemaking process.

A backup contact person should always be available. RRU has experienced situations where the listed contact person was on vacation, or otherwise unavailable to answer questions or respond to requests for documents. As a result, callers had to wait for the contact person to return, thereby losing valuable time during the comment period. Sometimes the contact person has been gone during the last week or two of the comment period, making it very difficult to obtain information needed to prepare a written comment.

Often, persons calling the telephone number in the *Notice* are connected to a voice-mail system instead of a live person. This can be acceptable if all voice-mail messages are promptly returned by an agency employee who

can answer questions and provide documents associated with the regulations. However, some agencies fail in this regard. In a number of cases, RRU staff have waited several days to receive any response to their voice-mail request. In a few cases, the delay was several weeks. When agencies fail to respond within a reasonable timeframe, the ability of regulated parties to review and comment on regulations is diminished during the public comment period. In some cases it seemed that the contact person was attempting to discourage participation by RRU in the rulemaking process. RRU is unable to determine whether such an approach is inadvertent or deliberate. However, RRU believes that other public participants in the process may encounter similar frustrations.

Calls to some contact persons resulted in the following problems: the contact had "more important" things to do than respond to questions regarding regulations; the contact was unwilling to volunteer information and would only respond to specific questions; or occasionally the contact became defensive (perhaps because they wrote the regulation). These types of responses by a contact person discourage public participation in the rulemaking process. RRU recommends that agencies select a contact person who is receptive to the concept of public participation in the rulemaking process. The contact person should also have time available to adequately respond to all inquiries from regulated and interested parties.

The Economic and Fiscal Impact Statement

As required by Executive Order W-144-97, the California Trade and Commerce Agency, in consultation with other specified state agencies, developed an Economic Impact Statement that was incorporated into the then-existing STD. 399 form (titled, Fiscal Impact Statement). The current version of the STD. 399 form is dated 2-98. Some agencies have incorporated the current STD. 399 into their rulemaking process. Other agencies have not. RRU has encountered the following problems regarding the use of the revised STD. 399.



Some agencies are still using an earlier version of the form, which only includes the Fiscal Impact Statement; the Economic Impact Statement is missing. This use of the old form is not an option, since all agencies are required to complete the 2-98 version of the STD. 399.

State Administrative Manual section 6680 requires that the STD. 399 be completely filled out, properly signed and transmitted to RRU at the beginning of the 45-day public comment period. However, in a number of instances the form has not been properly signed by the Agency Secretary or the highest ranking official in the state organization that is proposing the regulation. The form is not complete until it has been properly signed.

Many agencies are bypassing the intended purpose of the form by checking box A1(h) on the form, which indicates that the proposed regulation will not have any impacts. The primary intent of Part A of the STD. 399 is to identify the impacts on those that will be affected by the regulations. Many agencies also indicate that there are no fiscal impacts. However, if the regulations do not affect anyone, then two questions arise:

- Why do the citizens of California need the proposed regulations?
- Why is the agency expending time and money writing and promoting the regulations?

RRU has received STD. 399 forms for almost all regulatory proposals noticed since March 1, 1998. Many of those forms had box A1(h) checked. However, after reviewing the proposed regulation text, RRU determined that in many cases the agency's decision to check box A1(h) was not supported. Agencies should properly complete Part A and identify all parties that would be affected by the proposed regulations.

Even when an agency does identify affected parties in Part A of the STD. 399, some agencies do not follow through and adequately identify the costs and benefits associated

with the proposed regulations. Most regulations impose costs and/or benefits, and the agency proposing the regulations is expected to assess those costs and benefits – even if they cannot be quantified. By summarizing that knowledge on the STD. 399, the agency will enhance public participation in the rulemaking process and improve the quality of state regulations. Providing such information may also save agency staff time, since they will not have to respond to inquiries from numerous parties all asking the same basic questions about expected costs and benefits associated with the proposed regulations.

Even when the STD. 399 has been adequately completed, many agencies are not making the completed form available to the public, unless it is specifically requested. Even agencies that post information about proposed regulations (Notice of Proposed Action, regulation text, and Initial Statement of Reasons) on their Web site, do not post the STD. 399. A few agencies have informed RRU that they will be posting the STD. 399 on their Web site, and RRU encourages all agencies to do this.

Small Business Impacts

Small businesses account for ninety-eight percent of all businesses in California. Given this fact, it is hard to believe undocumented claims by many state agencies that their regulations would not affect a single small business. Some of the agencies making such claims are occupational licensing boards, whose licensees tend to overwhelmingly be sole-proprietorships or other small businesses.

The California Legislature has found and declared that regulations pose a potentially large burden on small businesses, and has included special provisions in the APA for such businesses. State agencies are required to identify alternatives that would lessen adverse impacts on small businesses, provide explanations for rejecting such alternatives, and draft regulations in "Plain English."

RRU has found that state agencies frequently fail to follow the letter and/or the spirit of these requirements, by simply claiming, without supporting evidence, that small businesses would not be impacted.

In some instances, agencies conclude that a regulation would have no cost impact, because the benefits of the regulation offset the costs. However, in such a situation some groups in the economy are still bearing significant and uncompensated costs. Rulemaking law requires agencies to identify the parties directly affected by a proposed regulation. Rulemaking law also defines directly-affected persons as those who derive a benefit or incur a cost from the regulation.

Writing in Plain English

Most state agencies claim in the *Notice of Proposed Action* that the regulation text is written in plain English. However GC section 11342(e) states, "Plain English" means language that can be interpreted by a person who has no more than an eighth-grade level of proficiency in English." Until recently it was difficult to know if proposed text complied with the law. Now most word-processing software have a built-in grammar checker that can automatically compute the grade level of text. Using such software, RRU has found that few regulations are written at the eighth-grade level. (Many are written at the college or postgraduate level.)

Although it may be difficult for agencies to write regulations in "Plain English", there are numerous resources available to help in this regard. At the federal level, the Plain Language Action Network is a government-wide group established to improve communications from the federal government to the public. Their Web site (www.plainlanguage.gov) contains resources and also has links to other relevant Web sites. The Presidential Memorandum on Plain Language, issued June 1, 1998, requires that federal agencies and departments "By January 1, 1999, use plain language in all proposed and final rulemaking documents published in the *Federal Register*" California

statutes already require "Plain English" for regulations that affect small business, but those requirements are generally not being followed.

RRU recommends that OAL more fully address the "Plain English" requirements of the APA. OAL needs to identify how compliance with the requirements will be measured, and to issue any necessary instructions to assist state agencies.

The U.S. Securities and Exchange Commission provides an example of how government can improve the readability of its documents. That agency produced a handbook explaining how to prepare security filings, which are complex legal documents, in plain English. (The RRU Web site at <http://commerce.ca.gov/regreview> has information on this SEC effort, and other Plain English topics.)

Rulemaking Information on the Internet

The Internet is a powerful tool that can increase the availability of rulemaking information. Some state agencies have begun to use it to disseminate information and communicate with regulated parties. Some agencies also allow written comments submitted during the 45-day public comment period to be sent electronically. RRU recommends that all state agencies use the Internet, in addition to the existing methods of disseminating information and communicating with regulated and interested parties.

RRU believes that agencies should include the following information for proposed regulations on their Web sites: Notice of Proposed Action; Initial Statement of Reasons; proposed regulation text; Economic and Fiscal Impact Statement; (STD. 399) Final Statement of Reasons; a dated notice of a withdrawal or abandonment; OAL decisions on the regulation; the date the regulation was filed with the Secretary of State; and the effective date of the regulation.



The Internet can also be used to provide an overview of all newly proposed regulations. OAL has worked with the Office of State Publishing, RRU and other parties to test the feasibility of posting the weekly *California Regulatory Notice Register (Register)* on the Internet. At the present time, the *Register* Table of Contents and the California Code of Regulations (CCR) are available on the OAL Web site. RRU commends this effort, but believes that more widespread distribution of the *Register* is necessary to increase participation in the rulemaking process. There are about two million small businesses and self-employed persons in California; however, the average weekly distribution of the *Register* is less than 800 copies. The *Register* contains a valuable weekly summary of proposed regulations and other rulemaking news and information, and should be more accessible.

Public Events on Proposed Regulations

Many agencies involve regulated parties in the rulemaking process before they publish a *Notice* in the *Register*. For example, the Air Resources Board often holds workshops and disseminates information on proposed regulations that are being developed. RRU believes that holding workshops, hearings, meetings, or other public events, prior to publishing the regulatory proposal in the *Register*, can significantly increase public participation in the rulemaking process and improve the quality of regulations. RRU especially encourages this approach for complex proposals that cannot easily be reviewed during the minimum 45-day public comment period. (A period of time which state agencies rarely extend, regardless of the complexity of a regulation or delays in disseminating rulemaking documents.)

Delivery of Comments

Most agencies will accept comments from regulated and interested parties sent by fax machine. However, a few agencies refuse to do this for unknown reasons, including some agencies that are located outside the Sacramento area.

Accordingly, persons commenting must incur the additional expense of overnight package delivery if they want the benefit of a full 45-day comment period. Otherwise, they must accept a shorter comment period and the uncertainty of knowing whether a mail delivery arrived before the deadline. RRU recommends that all agencies be required to accept comments by fax.

A few agencies currently accept comments by e-mail as a delivery option. RRU commends this practice and recommends that all agencies with e-mail capability accept comments via e-mail.

Asymmetries in the Rulemaking Process

The rulemaking process is similar to a debate on the merits of an agency's regulatory proposal. However, the debate is currently uneven in at least two respects. First, the agency can allocate a considerable amount of time and resources to the development and preparation of the proposal. But regulated and interested parties are legally, and usually, only allowed a 45-calendar day public comment period to review the proposal and prepare and submit any comments they may have. The legal comment period normally results in less than 30 working days to analyze and comment on a proposal. For a complex proposal, the time allowed for comments is frequently insufficient. This discourages impacted parties from participating in the rulemaking process. Ideally, the length of the comment period should be proportionate to the complexity of the proposed regulations, with some minimum comment-period length such as a 45-business day comment period.

Second, the current process allows the sponsoring state agency to present its proposal, and for regulated and interested parties to prepare and submit comments on that proposal. The agency must then respond to the public comments, prepare the final statement of reasons (FSOR) and submit the entire rulemaking record to OAL for review and approval or disapproval. The FSOR allows the agency to rebut the public comments.

However, since the commenters are not allowed to respond to the agency's rebuttal—the agency gets the last word. RRU recommends that those commenting be given the opportunity to review the agency's responses to comments in the FSOR prior to submission of the rulemaking record to OAL. Commenters should also be given the right to rebut the agency's response and have that rebuttal included in the final, complete rulemaking record that is submitted to OAL for its review. This approach would provide both the agency and commenters with an equal number of opportunities to be heard.

Determining Regulatory Actions

State resources are often consumed generating poorly written or ill-conceived regulatory proposals that are never adopted by the promulgating agency. Additional resources are consumed by the affected parties in responding to these ill-conceived proposals. Compounding this problem, agencies are not required to notify OAL, affected parties or others when they abandon a regulatory proposal. About one fourth of the 1997 regulations were still "open" in the rulemaking process as of December 1998.

As of July 1998, about nine percent of the 1996 regulatory proposals were still "open". Since that time, RRU made extensive efforts to contact the sponsoring agency to determine the outcome for regulations that remained open in excess of one year. The unique role of RRU allows the program the opportunity and means to identify the true outcomes of open regulations, by contacting the agencies involved and to report on the findings of that research.

As a result of those contacts, the percentage of "open" 1996 regulations on RRU records was reduced to about three percent, which represents those agencies that did not respond to the contact efforts of RRU. Better regulation writing will help to reduce this number. And a significant contributor to improved regulation writing is the proper identification of impacts.

Accessing the Final Statement of Reasons (FSOR)

Agencies are not legally required to respond or to provide the FSOR to parties who submit oral or written comments during the public comment period. While some agencies provide the FSOR anyway, other agencies only provide it in response to a specific request. The latter situation makes it difficult for parties to know the extent to which their comments were incorporated into the proposed regulations.

It may not always be feasible for agencies to send a copy of the FSOR to everyone who submits oral or written comments, since an agency may receive thousands of comments on controversial regulations. However, RRU believes that the FSOR should be sent to anyone who submits comments and specifically requests a copy of the FSOR. RRU also recommends that each agency make the FSOR available on its Web site for a reasonable period of time after its completion.

The Participation of Impacted Parties

The general lack of public participation is due to various factors, most of which have been identified and discussed in this chapter. RRU recommends that agencies work to remove, or at least lower, barriers to public participation, by taking as many of the following actions as possible:

- Establish an accurate method of tracking each regulatory proposal.
- Ensure the ready availability of a knowledgeable contact person.
- Fully and accurately complete the STD. 399, including cost and benefit estimates.
- Write the proposed regulations in plain English.
- Make regulatory information readily available on the Internet.
- Accept comments via facsimile and e-mail.
- Make the final statement of reasons more readily available.



V. APPENDICES



RRU
Review
Comment
Communicate

RRU CONTRIBUTIONS ON SPECIFIC REGULATORY PROPOSALS

The Department of Justice (DOJ) proposed regulations relating to the review of proposals to transfer nonprofit health facilities (Z97-0121-04). The transfer of assets from nonprofit to for-profit organizations required the Attorney General's review and approval only if a material amount of assets were being transferred. RRU telephoned DOJ and discussed the fact that the proposed regulation neglected to define "material assets". DOJ agreed that this information was lacking and modified the regulations to define "material assets."

The California Department of Social Services (CDSS) proposed regulations to define incidental medical services in adult community care facilities, pursuant to AB 2835, Statutes of 1996 (Z97-0128-02). The regulations would impose significant additional costs, without a commensurate increase in client health or safety, on facilities that provide adult care only during the day. After discussing the regulations with affected parties, RRU recommended that the regulations be modified to take into account differences between 24-hour care facilities and day care facilities, and thereby impose less burdensome staffing, reporting and documentation costs on the day care facilities. RRU also recommended that regulation text related to the list of restricted health conditions be modified to also account for these differences, and thereby impose less burdensome requirements on the day care facilities. CDSS modified the regulations to address all of RRU's principal concerns. After a series of additional modifications the regulations were approved and filed with the Secretary of State in September, 1998.

The Board of Landscape Architects (Board) proposed regulations to substitute the Landscape Architectural Registration Examination (LARE) for the existing Professional Examination for Landscape Architecture (PELA) (Z97-0226-02). RRU noted that this appeared to be the fourth examination change in four years. The regulations included a chart to show what parts of previously passed examinations would be credited to the new LARE. RRU submitted comments indicating that the chart was confusing and that candidates may incur unnecessary costs due to uncertainty regarding which parts of the various examinations would count towards final passage and licensure. The Board amended the regulation to clarify the examination plan in a manner that addressed RRU's concerns.

The Office of Statewide Health Planning and Development (OSHPD) proposed regulations to expand the amount of information that hospitals must collect and report on the source of payment for each discharged patient (Z97-0411-01). The regulations would redefine "payor" categories and add the requirement that information regarding the type of coverage and the name of the plan also be collected and reported. OSHPD indicated that these expanded reporting requirements would not have an adverse impact on businesses, and that only a "...minimal cost impact on some hospitals that may need to upgrade their data collection systems". RRU was unable to find any cost analysis in OSHPD files. Various industry sources estimated the statewide cost to be between \$2 and \$10 million. RRU submitted written comments requesting that OSHPD assess the economic impact of the new requirements, justify the new reporting requirements, and consider delaying the proposed implementation date. The regulations were withdrawn and re-noticed in May 1998 with more complete cost estimates.

The Occupational Safety and Health Standards Board (OSHSB) proposed regulations to address the safety of tree-trimming crews working in proximity to de-energized high-voltage electrical lines (Z97-0418-01). The proposed language was unclear as to the energized state of the conductors or equipment. RRU confirmed this lack of clarity through discussions with industry representatives and recommended that OSHSB modify the regulation text to correct this. OSHSB modified the language to address RRU's concerns as well as the concerns of other commentors.

The Department of Real Estate (DRE) proposed to amend regulations relating to subdivisions, brokers, and salespersons (Z97-0506-06). RRU submitted a comment letter stating that several sections were unclear and other sections were not written in plain English (one sentence was 125 words in length). As a result of these deficiencies, real estate businesses and individual brokers and salespersons could incur unnecessary time and expense attempting to understand and comply with the regulations. DRE modified the proposed regulations to address many of RRU's concerns.

The Secretary of State proposed regulations that would govern the use of digital signatures in written communications with public entities (Z97-0513-05). Two professional standards documents were referred to in the regulations. RRU submitted a comment letter to advise the agency that both documents needed to be incorporated by reference, including the exact date of each document. Otherwise, regulated parties would not know how to comply with the new requirements. The Secretary of State's staff thanked RRU for its assistance and agreed to make the changes to the proposed regulations.

The California Air Resources Board (ARB) proposed amendments related to reducing Volatile Organic Compound (VOC) emissions from consumer products (OAL Notice File #Z97-0527-12) The regulations amend existing consumer products regulations by adding product category definitions and VOC standards for consumer product categories which would become effective on various dates between the years 2000 and 2005. The amendments include 18 additional product categories and about 3,400 individual products, and impact more than 160 manufacturers or distributors.

During the review process RRU staff had numerous contacts with representatives of the impacted businesses. All parties were gratified by RRU's participation and expressed appreciation for discussing issues with them. They encouraged continued RRU participation in the rulemaking process by saying, "They [RRU]... are seen ...as an honest broker of information." and "ACMC strongly supports the continuation, and expansion of this division.". One manufacturer wrote RRU was "a breath of fresh air."

RRU raised the following issues: 1) the cost estimates for the reformulation of affected consumer products were understated for some products; 2) the cost estimates for the cost-effectiveness values were understated for the annualized fixed-cost portion of the proposed cost-effectiveness standards; 3) placing four product categories in a two-tier compliance format requiring the products to be reformulated by the year 2002, and again by 2005, appeared to be unreasonable [and also require the manufacturers to submit: a) annual sales and formulation information, b) a compliance plan and c) annual updates to ARB] and 4) the term "commercially feasible" was not defined, and RRU recommended that ARB meet with industry representatives to establish a mutually acceptable definition.

ARB agreed to establish subcategories for products that demonstrated higher reformulation costs and withdrew the two-tier compliance format and the additional reporting requirements.

The Department of Pesticide Regulation (DPR) proposed a regulation to specify a uniform method of cholinesterase analysis for medical monitoring of exposure to pesticides (Z97-0617-04). After discussing the regulation with numerous affected parties, RRU submitted comments addressing the following issues: 1) DPR did not adequately address the cost impacts of the proposed changes, 2) there were several clarity issues that would cause regulated parties to incur time and expense to resolve, 3) DPR did not address performance standards as an alternative to the prescriptive standards being proposed, 4) DPR did not adequately justify the requirement that whole blood assays be performed within 24 hours, which is difficult for rural samples that are shipped overnight to a large central laboratory for analysis. OAL subsequently disapproved the proposed regulations.

The Governor's Office of Emergency Services (OES) proposed regulations to implement the California Accidental Release Prevention Program (CalARP) (Z97-0728-02) The proposal incorporated federal requirements and added 200 chemicals to the federal list of hazardous substances. The tables listing the chemicals and threshold amounts were confusing and contained duplicative information. OES did not address costs or benefits of the federal-state differences and required regulated parties to file two separate registrations on different dates, one for the state and one for the federal government. RRU submitted comments expressing these and other concerns. OES withdrew the proposal and in May 1998, re-noticed the regulations with amended language and an economic impact analysis that addressed the majority of RRU concerns.

The California Department of Food and Agriculture (CDFA) proposed changes to the electric watt-hour meter regulations (Z97-1003-02). Among other changes, CDFA proposed to include marinas as locations where sub-meters would be subject to these regulations. RRU contacted numerous affected parties and discovered that most marina businesses and trade associations had not been notified of the proposed changes. RRU also learned that most marina sub-meter installations, for various practical and safety reasons, were installed at a height lower than the 30-inch minimum limit imposed by the regulations. RRU and industry estimates of the cost for complying with the 30-inch limit ranged from \$2 to \$7.5 million, versus the CDFA claim that there would be no significant adverse economic impact. RRU commented on the significant economic impact and proposed four less burdensome alternatives for CDFA to consider and evaluate. RRU's initiative in notifying members of the marina industry also resulted in several other comment letters from the industry, despite the inadequate time that was available for their response.

The industry parties thanked RRU for alerting them to the proposed regulations and the potential economic impacts. The California Department of Boating and Waterways also thanked RRU for alerting them to the proposed regulations and for suggesting several less burdensome alternatives. After evaluating the comments received, CDFA withdrew the regulatory proposal.

The Air Resources Board (ARB) proposed regulations to implement the Heavy Duty Inspection Program and the Periodic Smoke Inspection Program (Z97-1014-09). Among other things, this proposal would have required all vehicles over 6,000 pounds to undergo expensive testing and repair measures to comply with the regulations. This would have inadvertently included sports utility and recreational vehicles for personal use. RRU submitted comments and ARB agreed to modify the text of the regulations to eliminate personal use vehicles from the requirements and to make the reporting dates consistent.

The Hearing Aid Dispensers Examining Committee (HADEC) proposed regulations regarding Educational Requirements for Licensure of Hearing Aid Dispensers (Z97-1110-11). HADEC proposed that ten (10) post-secondary educational courses be completed before an applicant could take the hearing aid dispenser examinations. No quantitative economic data was provided by HADEC, the availability of some courses was questionable, and less burdensome alternatives were not considered. The proposed regulations were modified to include alternative courses.

The Cemetery and Funeral Program (Program) proposed to change the definitions related to the modification and development of burial spaces (Z98-0113-06). The proposed changes would have required cemeteries to amend and file new maps every time there was an interment or other insignificant change to cemetery land. Industry sources indicated the cost of compliance could reach \$10 million annually. RRU submitted comments urging the Program to consider adverse economic impacts and to consider less burdensome alternatives. The Program subsequently amended the regulations to address RRU and others concerns.

The California Coastal Commission (Commission) proposed numerous amendments to streamline and clarify some of its regulations (Z98-0206-01). RRU identified several instances where the regulation text could be improved so the regulations would be less burdensome on affected parties. RRU also provided a readability analysis to demonstrate that the regulation text was not written in plain English, even though the Commission stated that it was. RRU recommended that the Commission consider rewriting the regulation text to more closely approximate the plain English level required by the Government Code. Regulation text written in plain English lessens the adverse economic impacts on small businesses and individuals attempting to comply with the regulations. The Commission accepted and responded to several of RRU suggestions, which resulted in regulation text that was easier to understand and less burdensome to affected parties.

The Fish and Game Commission (Commission) proposed regulations that would ban the importation of live aquatic plants and animals (Z98-0306-02, Z97-1125-04). The Commission had not adequately researched and assessed the adverse economic impacts to affected businesses which are: airlines, importers, and retail food markets. Of the three, small family-owned businesses that import either turtles or bull frogs would be the most adversely impacted. It was the assertion of the importers that the ban would force them to close down their businesses, causing a loss of over \$1,000,000 in annual business revenue to California's economy. In addition, the Commission did not consider the alternative of not regulating this activity. The regulations would also not solve the problem described in the Initial Statement of Reasons. RRU submitted comments expressing these and other concerns. The Commission subsequently rejected the proposed regulations.

The Office of Real Estate Appraisers (OREA) proposed regulation amendments to incorporate federal rules regarding federally-related transactions and make changes in forms and appraiser qualifications (Z98-0409-01). Many of the provisions lacked clarity and there was a lack of consistency between the proposed text and the forms incorporated by reference. Due to management and staff turnover, no one at OREA was able to adequately explain the regulation provisions or the forms. After extensive discussions with OREA staff, they agreed to withdraw or substantially modify the regulations.

The Occupational Safety and Health Standards Board (OSHSB) proposed regulations which would apply building/construction site standards to all other elevated work locations that would expose a worker to a fall of four or more feet (Z98-0518-01). Businesses indicated to RRU and OSHSB that many types of mobile equipment and other work locations could not feasibly comply with the proposed regulations without prohibitively expensive retrofits. RRU submitted comments suggesting that OSHSB assess the costs and benefits of the proposed change and clarify the text regarding potential exceptions to the regulations.

The Department of Motor Vehicles (DMV) proposed regulations to transfer the Motor Carrier Safety program from the Public Utilities Commission to DMV (Z98-0629-04). The proposed regulations specify the permit, financial responsibility, and documentation requirements for motor carriers. RRU submitted comments recommending that DMV amend the regulations to include application processing times as required by the Permit Reform Act, and to clarify several provisions, including those related to reporting requirements and seasonal permits. DMV subsequently amended the regulation, incorporating all of RRU recommendations.

The Department of Transportation (DOT) proposed to amend regulations concerning the placement, size, licensing and permitting of outdoor advertising displays (Z98-0724-01). RRU submitted a comment letter stating that the regulations overall lack of clarity, which may have an adverse economic impact. Businesses may incur informational costs when they spend time and money attempting to understand how to comply with the regulations. RRU also questioned the necessity for some of the provisions, suggested a less burdensome alternative and pointed out that the regulations did not comply with the plain English requirement. DOT also did not adequately address economic impacts and did not properly complete the Economic and Fiscal Impact Statement (STD. 399).

The Board of Forestry (Board) proposed to amend regulations to specify when “waterbreaks” must be installed during winter timber harvests (Z98-0811-03). The Board concluded that there would be no economic impacts as a result of the amendments. This conclusion was not supported by the rulemaking file, and some provisions were sufficiently unclear that timber operators may be subject to sanctions because of varying interpretations of the rule by enforcement staff. RRU suggested the Board consider less burdensome alternatives and noted editorial errors. The Board published modifications on October 13, 1998 which made editorial corrections, but did not address the balance of RRU concerns. OAL subsequently disapproved the regulations.

The Veterinary Medical Board (Board) proposed regulations regarding the minimum standards of practice for veterinarians (Z98-0818-17). RRU submitted comments questioning the Board’s intent and the necessity for certain prescriptive provisions. RRU also expressed concern regarding a provision that would make it unprofessional conduct for a veterinarian to treat an injured animal at accident scenes unless the owner was present. RRU suggested the Board consider a “good Samaritan rule” as an alternative.

The Department of Health Services (DHS) proposed regulations that would establish minimum requirements for playground safety (Z98-0902-0101). The regulations establish requirements for playground construction and maintenance; qualifications for operators and inspectors; and require all playgrounds to be inspected by August 1, 1999. RRU submitted comments regarding the DHS failure to address economic impacts and consider less burdensome alternatives. The inspection deadline forces playground operators to complete costly inspections and modifications in less than one year, despite the fact that DHS was mandated to adopt these regulations in 1992. Earlier adoption of the regulations would have allowed operators to spread inspection, upgrade, and maintenance costs over several years. The regulations also do not recognize “Certified Inspectors” as qualified to perform inspections and appear to apply new national standards retroactively.

The Board of Forestry (Board) proposed regulations pertaining to the content of timber harvesting plans and the conduct of timber operations in Santa Cruz County (Z98-0908-07). The regulations were a revised version of regulations that were initially noticed as Z98-0707-06. The Board responded to numerous public comments, including those submitted by RRU, on the previous rulemaking, and provided cost estimates. However, the proposed regulations still contain numerous reporting requirements that were justified by the Board. RRU also requested that the Board consider a less burdensome alternative to the proposed limits on helicopter operations. Finally, RRU suggested that the Board delete language related to helicopter flight paths, since jurisdiction over helicopter flights belongs solely to the U.S. Federal Aviation Administration.

The Department of Justice (DOJ) proposed regulations that require individuals purchasing a firearm, capable of being concealed, to obtain a basic firearms safety certificate (Z98-0929-17). The regulations also establish requirements for basic firearms safety certificate (BFSC) course content, instructors and course providers. This program has been in place for several years without underlying regulations. DOJ proposes to limit the ability to become a DOJ approved course provider to firearms dealers. RRU submitted comments questioning the necessity of approving course providers and suggested that DOJ consider a less burdensome alternative, such as permitting educational providers (other than firearms dealers) to give and advertise the BFSC course.

The Air Resources Board (ARB) proposed a regulation to place final limits on the propene and butane contents of LPG intended for use in motor vehicles (Z98-1013-07). In its review, RRU discovered that the proposed regulation text was unclear with respect to the content limit for pentene (another chemical substance). This may have resulted in differing interpretations of the regulation by affected parties and enforcement agencies. RRU discussed this with ARB staff and the language was modified to clearly state the intended specification requirements.

The Department of Conservation (DOC) proposed regulation changes to expand the definition of “beverage manufacturer” to include California companies that distribute, sell, and ship beverages (Z98-1201-03). DOC also included requirements for “beverage manufacturers” to notify it when another party agreed to pay their processing fees. In its review, RRU determined that DOC had not provided sufficient data regarding the costs and benefits resulting from the proposed regulation. The expanded definition would subject additional California businesses to recordkeeping and reporting requirements and would potentially have adverse economic impacts on private sector parties. RRU also commented that the rulemaking file did not demonstrate the necessity for the regulation and questioned whether fiscal impacts had been adequately addressed. The Department of Finance was provided a copy of RRU comments.

The Bureau of Automotive Repair (BAR) proposed regulations to implement the Low Income Repair Assistance Program (Z98-1214-01). The proposed regulations required a low income motor vehicle owner to pay a minimum of \$200 towards emission related repairs to be eligible for state monetary assistance. However, RRU noted that the accompanying form stated that state assistance was available for repair costs that exceeded \$250. BAR subsequently amended the regulations to eliminate the conflict between the regulation text and the form and lowered the owner’s participation requirement to \$75.

The Integrated Waste Management Board (Board) proposed regulations to establish criteria and legal procedures for creating a list of unreliable contractors, subcontractors, borrowers and grantees (Z98-1221-01). The list is intended to identify parties who have been unreliable or irresponsible with respect to a Board agreement. RRR commented on the economic impacts, less burdensome alternatives and two clarity issues. The amendments would allow the Board to place a company on its “Unreliable List” for “Current violation of *any* [emphasis added] board statute or regulation ...”, with only two specified exceptions. This would enable the Board to place a company on its “Unreliable List” for “Current violation of *any* [emphasis added] board statute or regulation ...”, with only two specified exceptions. This would enable the Board to place a company on the “Unreliable List” for minor violations such as litter at a state landfill. RRU requested that the language be rewritten to more specifically identify the statutes and regulations that would be the basis for placing a company on the “Unreliable List”. RRU also requested that the Board consider rewriting the regulation text to eliminate minor violations, unless the Board specifically intended to use minor violations as grounds for placement on the List. The Board modified the regulations to address all of the RRU concerns.

The *Board of Equalization* (Board) proposed a regulation to clarify the definition of an appraisal unit for purposes of computing property tax of a mining property (Z98-1229-04). RRU staff determined that the Board did not adequately assess economic or fiscal impacts. The Board did not indicate that the proposed regulations would have a positive impact on private business because of the reduction in property taxes paid as a result of the proposed new calculations. In addition, the Board did not address the negative impact the regulations will have on public services that receive most of their funding through property taxes. RRU contacted Department of Finance, who was not aware of the proposed action, and sent a copy of the Economic and Fiscal Impact Statement (STD. 399), completed by the Board, for their review.

Regulatory Proposals by State Agency

AGENCY	YEAR			3-Year Total
	1998	1997	1996	
Total Number	580	573	663	1816
Academic Content and Performance Standards, Comm. for the Establishment of	-	1	-	1
Accountancy, Board of	3	1	5	9
Acupuncture Board	4	3	2	9
Administrative Hearings, Office of	2	4	1	7
Administrative Law, Office of	-	1	-	1
Aging, Dept. of	1	-	2	3
Agricultural Labor Relations Board	3	-	-	3
Air Resources Board	24	12	19	55
Alcohol and Drug Programs, Dept. of	2	6	3	11
Alcoholic Beverage Control, Dept. of	2	-	1	3
Allocation Board, State	1	-	1	2
Apple Comm., California	-	1	-	1
Apprenticeship Council, California	1	1	1	3
Arbitration Review Program	-	-	1	1
Architect, Division of the State	-	1	-	1
Architectural Examiners, Board of	5	4	4	13
Arts Council, California	1	-	-	1
Athletic Comm., State	1	1	5	7
Attorney General, Office of	1	-	-	1
Audits, Bureau of State	-	-	-	0
Automotive Repair, Bureau of	5	6	7	18
Banking Department, State	-	-	1	1
Barbering and Cosmetology Program	3	1	4	8
Behavioral Sciences, Board of	7	2	7	16
Boating and Waterways, Dept. of	1	-	2	3
Building Standards Comm., California	7	15	10	32
Business, Transportation and Housing Agency	-	1	-	1
California State University, Trustees of the	-	-	1	1
California State University Risk Management Authority	-	1	-	1
Cemetery and Funeral Programs	1	6	1	8
Chiropractic Examiners, Board of	2	-	1	3
Coastal Comm., California	1	4	-	5
Community Services and Development, Dept. of	1	4	-	5
Conservation, Dept. of	3	4	3	10
Consumer Affairs, Dept. of	-	2	1	3
Contractors' State License Board	2	7	1	10
Control, State Board of	3	-	1	4
Controller, Office of the State	-	3	1	4
Corporations, Dept. of	8	4	9	21
Correctional Peace Officers' Standards and Training, Comm. on	1	-	-	1
Corrections, Board of	3	1	2	6
Corrections, Dept. of	12	13	14	39
Court Facilities, The Task Force on	-	-	-	0
Court Reporters Board of California	-	2	1	3

Regulatory Proposals by State Agency

AGENCY	YEAR			3-Year Total
	1998	1997	1996	
Criminal Justice Planning, Office of	-	-	1	1
Cut Flower Commission	-	1	-	1
Delta Protection Comm.	-	-	1	1
Dental Examiners, Board of	11	11	6	28
Developmental Services, Dept. of	5	1	3	9
Earthquake Authority, California	-	1	-	1
Education, Dept. of	13	5	9	27
Education, State Board of	-	-	-	0
Electronic and Appliance Repair, Bureau of	-	2	1	3
Emergency Medical Services Authority	3	2	1	6
Emergency Services, Office of	2	2	1	5
Employment Development Dept.	2	5	37	44
Employment Training Panel	3	4	3	10
Energy Comm., California	1	3	1	5
Engineers and Land Surveyors, Board for Professional	2	2	1	5
Environmental Health Hazard Assessment, Office of	1	-	3	4
Environmental Protection Agency, California	1	-	1	2
Equalization, Board of	20	23	24	67
Fair Employment and Housing Comm.	1	-	-	1
Fair Political Practices Comm.	39	50	37	126
Finance, Dept. of	-	1	-	1
Financial Institutions, Dept. of	2	2	-	4
Fire Marshall, Office of the State	4	1	2	7
Fish and Game Commission	39	35	34	108
Fish and Game, Dept. of	3	1	3	7
Food and Agriculture, Dept. of	35	24	33	92
Forest Products Comm., California	-	1	-	1
Forestry, Board of	7	11	5	23
Franchise Tax Board	4	2	3	9
Geologists and Geophysicists, Board of Registration for	2	2	1	5
Gold Discovery to Statehood Sesquicentennial Comm.	1	-	-	1
Grape Rootstock Improvement Comm., California	-	1	-	1
Guide Dogs for the Blind, State Board of	-	-	1	1
Health and Welfare Agency Data Center	-	1	-	1
Health Planning and Development, Office of Statewide	3	1	6	10
Health Services, Dept. of	19	28	32	79
Hearing Aid Dispensers Examining Committee	2	5	-	7
High-Speed Rail Authority, California	1	-	-	1
Highway Patrol, California	7	7	8	22
Home Furnishings and Thermal Insulation, Bureau of	1	2	1	4
Horse Racing Board, California	4	6	20	30
Housing and Community Development, Dept. of	3	5	3	11
Housing Finance Agency, California	2	-	1	3
Independent Living Council, State	-	1	-	1
Industrial Medical Council	1	2	11	14
Industrial Relations, Dept. of	6	10	6	22

Regulatory Proposals by State Agency

AGENCY	YEAR			3-Year Total
	1998	1997	1996	
Information Technology, Dept. of	-	-	1	1
Insurance, Dept. of	6	11	10	27
Integrated Waste Management Board, California	5	5	14	24
Justice, Dept. of	10	4	1	15
Lands Comm., State	1	1	2	4
Landscape Architects Technical Committee	5	3	2	10
Managed Risk Medical Insurance Board	4	3	5	12
Mandates, Comm. on State	5	2	2	9
Medical Board of California	9	5	12	26
Mental Health Planning Council, California	-	1	-	1
Mental Health, Dept. of	1	3	3	7
Mining and Geology Board, State	1	2	3	6
Motor Vehicles, Dept. of	13	5	13	31
New Motor Vehicle Board	8	1	-	9
Nursing Home Administrators, Board of	-	-	4	4
Occupational Safety and Health Appeals Board	-	1	-	1
Occupational Safety and Health, Div. of	1	-	-	1
Occupational Safety and Health Standards Board	12	12	14	38
Optometry, Board of	3	4	3	10
Osteopathic Medical Board	1	-	1	2
Parks and Recreation, Dept. of	-	-	1	1
Peace Officer Standards and Training, Comm. on	15	11	10	36
Personnel Administration, Dept. of	-	1	1	2
Personnel Board, State	4	4	5	13
Pesticide Regulation, Dept. of	9	5	5	19
Pharmacy, Board of	3	4	10	17
Physical Therapy Board of California	4	-	5	9
Physician Assistant Committee	-	-	2	2
Pilot Commissioners, Board of	4	1	1	6
Planning and Research, Office of	1	-	-	1
Podiatric Medicine, Board of	3	2	1	6
Pollution Control Financing Authority, California	1	-	1	2
Prison Terms, Board of	5	3	2	10
Private Postsecondary and Vocational Education, Bureau for	2	-	2	4
Psychology, Board of	4	1	3	8
Public Employees' Retirement System	3	-	-	3
Public Employment Relations Board	1	1	-	2
Public Utilities Comm.	1	4	-	5
Real Estate Appraisers, Office of	3	1	1	5
Real Estate, Dept. of	1	5	3	9
Reclamation Board	1	-	-	1
Registered Nursing, Board of	1	3	2	6
Rehabilitation, Dept. of	3	1	1	5
Resources Agency	3	2	1	6
Respiratory Care Board	-	-	6	6
San Joaquin River Conservancy	-	1	-	1

Regulatory Proposals by State Agency

AGENCY	YEAR			3-Year Total
	1998	1997	1996	
Secretary of State	3	4	2	9
Security and Investigative Services, Bureau of	-	5	-	5
SF Bay Conservation and Development Comm.	3	10	18	31
Social Services, Dept. of	11	10	15	36
Speech-Language Pathology and Audiology Examining Committee	3	1	-	4
Spill Prevention and Response, Office of	3	4	6	13
Structural Pest Control Board	2	3	4	9
Student Aid Comm.	1	1	-	2
Tax Credit Allocation Committee, California	1	2	2	5
Teacher Credentialing, Comm. on	11	9	11	31
Teachers' Retirement System, State	-	1	-	1
Tomato Comm., California	-	1	-	1
Toxic Substances Control, Dept. of	4	11	9	24
Trade and Commerce Agency, California	7	5	3	15
Traffic Safety, Office of	-	1	-	1
Transportation, Dept. of	2	4	10	16
Treasurer, Office of State	1	1	-	2
Unemployment Insurance Appeals Board, California	1	1	1	3
Veterans Affairs, Dept. of	1	2	-	3
Veterinary Medical Board	1	4	2	7
Vocational Nurse and Psychiatric Technician Examiners, Board of	-	2	3	5
Water Resources, Dept. of	1	1	-	2
Water Resources Control Board, State	3	2	7	12
Workers' Compensation Appeals Board	-	-	1	1
Youth Authority, Dept. of the	2	2	3	7
Youthful Offender Parole Board	1	-	1	2

An Overview of the California Rulemaking Process

The following flowchart, prepared by RRU, provides basic information about the state rulemaking process. State agencies and interested parties should always contact the Office of Administrative Law regarding rulemaking questions.

Preparation of the Proposed Action for Public Comment

An agency must have delegated authority from the Legislature to adopt, amend, or repeal a regulation, and must demonstrate by substantial evidence in the rulemaking record the necessity for the proposed regulatory action. [GC § 11349]

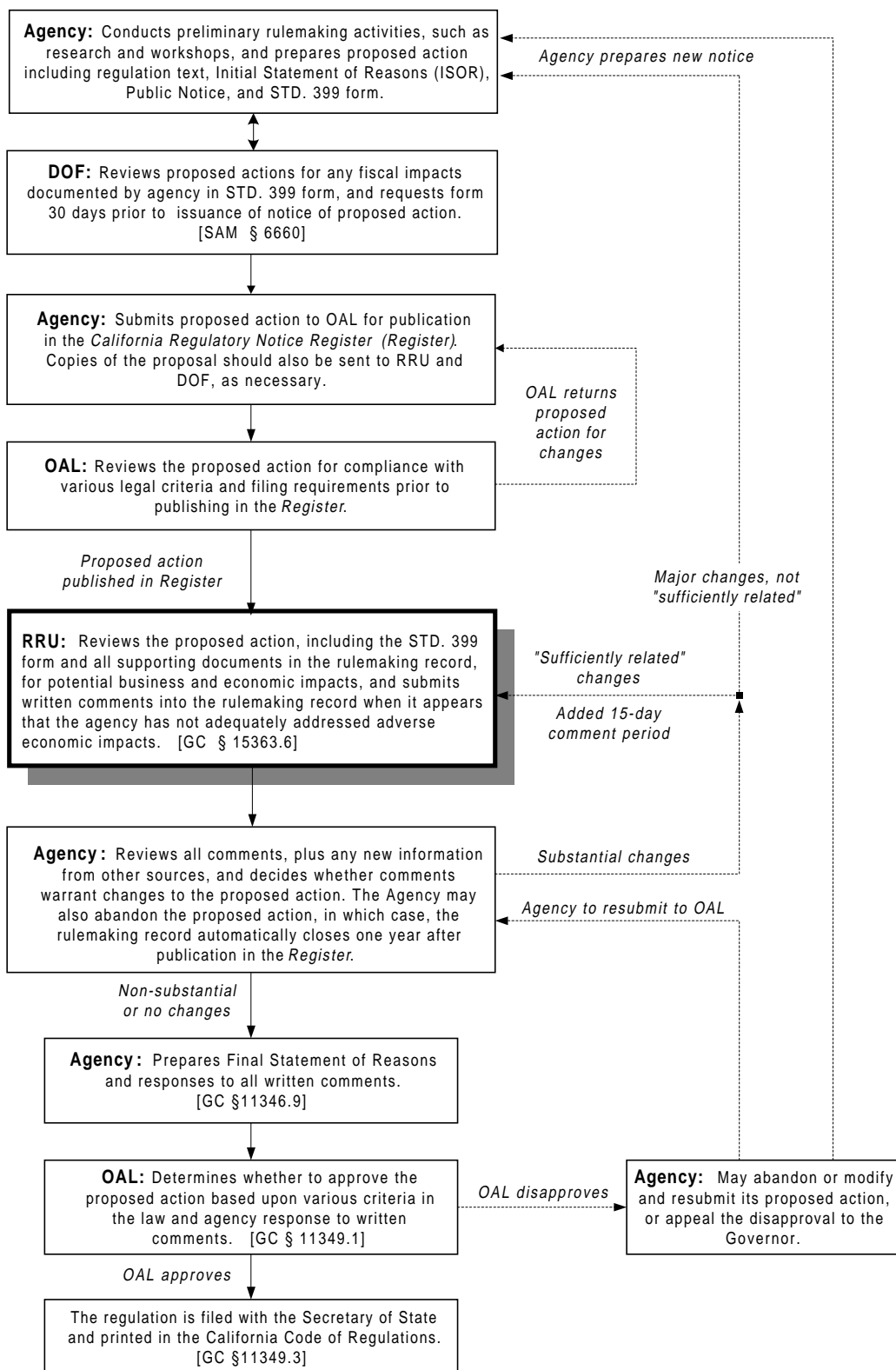
Public Comment Period

All rulemaking documents must be available for public review and comment. [GC § 11346.4]

Final Review

Resolution of public comments and other issues.

DOF: Department of Finance
GC: Government Code
OAL: Office of Administrative Law
RRU: Regulation Review Unit
SAM: State Administrative Manual



STATE OF CALIFORNIA

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME

CONTACT PERSON

TELEPHONE NUMBER

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400

NOTICE FILE NUMBER

Z

ECONOMIC IMPACT STATEMENT**A. ESTIMATED PRIVATE SECTOR COST IMPACTS** *(Include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

☐ a. Impacts businesses and/or employees☐ b. Impacts small businesses☐ c. Impacts jobs or occupations☐ d. Impacts California competitiveness☐ e. Imposes reporting requirements☐ f. Imposes prescriptive instead of performance standards☐ g. Impacts individuals☐ h. None of the above *(Explain below. Complete the Fiscal Impact Statement as appropriate.)*

h. (cont.) _____

*(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)*2. Enter the total number of businesses impacted: _____ Describe the types of businesses *(Include nonprofits)*:

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional *(list areas)*:

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted:

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes☐ No

If yes, explain briefly: _____

B. ESTIMATED COSTS *(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$

a. Initial costs for a small business: \$ _____

Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____

Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual \$ _____

Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry:

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$

4. Will this regulation directly impact costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$_____ and the_____ number of units:

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations:

- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$_____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit:

2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

- Explain:

3. What are the total statewide benefits from this regulation over its lifetime? \$_____

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not:

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$ _____	Cost: \$ _____
Alternative 1:	Benefit: \$ _____	Cost: \$ _____
Alternative 2:	Benefit: \$ _____	Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain:

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million ? ☐ Yes ☐ No (If No, skip the rest of this section)

2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: \$ _____ Cost-effectiveness ratio: _____

Alternative 1: \$ _____ Cost-effectiveness ratio: _____

Alternative 2: \$ _____ Cost-effectiveness ratio: _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)

☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)

☐ b. Will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

☐ 2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. Implements the Federal mandate contained in _____

☐ b. Implements the court mandate set forth by the _____
court in the case of _____ vs. _____

☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

☐ d. Is issued only in response to a specific request from the _____
_____ which is/are the only local entity(s) affected;

☐ e. Will be fully financed from the _____ authorized by Section _____
_____ of the _____ Code;

☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.



- ☐ 3. Savings of approximately \$ _____ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
- ☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE
AGENCY SECRETARY ¹		DATE
APPROVAL/CONCURRENCE		
DEPARTMENT OF FINANCE ²	PROGRAM BUDGET MANAGER	DATE
APPROVAL/CONCURRENCE		

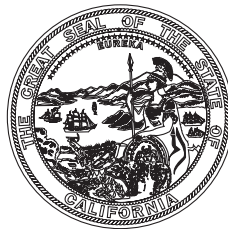
- The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
- Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399. However, Finance must immediately receive a copy of each STD. 399 submitted to OAL without Finance signature, and Finance may subsequently question the "no fiscal impact" finding of a state agency.

ECONOMIC IMPACT STATEMENT

GUIDELINES

as related to the STD. 399 form discussed in

STATE ADMINISTRATIVE MANUAL (SAM) Section 6680



*Prepared by the
California Trade and Commerce Agency
Regulation Review Unit (RRU)*

February 1998

GUIDELINES for the Economic Impact Statement in STD. 399

INTRODUCTION

The revised STD. 399 form combines the Fiscal Impact Statement (FIS) with a new Economic Impact Statement (EIS) required under Executive Order W-144-97 issued by Governor Wilson. The Order states that "The economic impact statement shall provide for consistent application of all existing statutory requirements for economic an analysis of regulations, shall be used as the basis for the determination of fiscal impacts, and shall be incorporated into the fiscal impact statement required for proposed regulations." Guidelines for the EIS are set forth in the following paragraphs. (See SAM sections 6600-6670 for the FIS instructions; and 6680 for general EIS instructions.)

The EIS is intended to provide a clear and concise summary of the economic impacts of proposed regulations. It is not a replacement for a rulemaking record, nor for the analysis and documentation it must contain. Each state agency is required to provide in the rulemaking record facts, evidence, documents, testimony, or other evidence it relied upon to support its impact findings. [See California Code of Regulations (CCR) Title 1, Chapter 1, Article 2, section 10, and Government Code (GC) § 11346.5(a)(8)]. As a result, the EIS information can only be presented on the STD. 399 after an impact analysis is performed. The EIS is also not a substitute for any other requirements in the California Administrative Procedures Act (APA), or Health and Safety Code (H&SC) § 57005 concerning major California Environmental Protection Agency (Cal/EPA) regulations.

Not every question in the EIS is applicable to every proposed regulation. The EIS is designed to summarize the various types of impacts that could occur as a result of the hundreds of regulations that are proposed by state agencies each year.

Numerous questions request dollar amounts or other numeric values. Regulatory agencies should provide quantitative responses to such requests whenever possible. If it is not possible to provide a precise numeric response, an estimated range or order of magnitude should be given. If it is not possible to respond quantitatively, a qualitative response should be provided that contains sufficient detail to clarify the nature or magnitude of impacts. Unacceptable qualitative responses, when used without clarifying information, include vague terms such as "few", "minor", and "occasional". Unacceptable single-word responses also include "inapplicable" and "unknown". If a question in the form is not relevant for a particular regulation, or does not affect a specific group, then that should be explicitly stated. When the specific information requested is not available, a reason should be given. However, any information that is available or known should be provided.

Part 1 provides a brief overview of economic impact analysis. The APA requires that an impact analysis be conducted, as documented in numerous places in the EIS guidelines, but does not discuss the analytic techniques needed to conduct the analysis and produce the impact information required for the rulemaking record. The overview describes the generally acceptable approaches and practices that constitute a standard impact analysis. Additional information on impact an analysis is provided later in these EIS guidelines, as related to specific questions in the EIS and rulemaking law.

Part 2 describes the procedures for filing the STD. 399 form, while Part 3 provides guidelines specific to each of the subject areas and individual questions in the EIS. Included throughout are citations from the APA and H&SC that document the reporting requirements contained in the form.

AN OVERVIEW OF IMPACT ANALYSIS

Part 1

Economic impact analysis is a standard technique for measuring the effects of government actions, and for presenting the results in a way that helps policy makers make appropriate choices. It is used by the federal government and most of the states, including California, to assess the economic effects of a

proposed regulation. A complete impact analysis includes an evaluation of all the anticipated costs and benefits of a proposed regulation, and any alternatives to that regulation that are potentially effective and reasonably feasible. (For the purposes of the EIS, agencies need only include *direct* costs and benefits on regulated parties.)

There is no single formula, technique, or methodology for conducting an impact analysis of the myriad of regulations proposed by state agencies. The analysis of costs, benefits, and alternatives involves uncertainties, and requires informed professional judgments that take into account the many features of a regulation. An understanding of impact analysis will often help to select the best regulatory approach, even when all the quantitative techniques of such an analysis cannot be used.

There is no standard amount of time or resources that should be expended on an impact analysis. Regulations vary widely and the staff work devoted to an economic impact analysis should be commensurate with the size, scope, and complexity of the regulation.

The EIS portion of the STD. 399 form is intended to facilitate the organization of the impact analysis required of regulatory agencies. The questions and topics generally incorporate the following basic steps in preparing an economic impact analysis: (1) Specify the problem, and the current and future impacts of not addressing the problem; (2) Consider possible alternatives to the regulation, including market-based solutions and not regulating; (3) Conduct a cost analysis that identifies affected parties and estimates the value of costs; (4) Conduct a benefit assessment that identifies affected parties and estimates the value of benefits; (5) Compare benefits and costs, including the magnitude and incidence of these impacts; and (6) Select a regulatory approach. Ideally, the proposed regulation should have the highest net benefit of possible regulatory approaches. If this determination cannot be made, the proposed regulation should have benefits that exceed costs.

The assessment of costs and benefits may be facilitated by the use of spreadsheets to produce tables of the various impacts on regulated parties. The display of impact information in tables is an approach that is required, or recommended, by a number of other states. Although there is no single format that will work for every regulation, there are standard formats that are typically used. For example, the costs of a regulation that affects a variety of industries can be depicted in a table where each row represents a particular industry and each column represents a specific type of impact. Summing across rows would yield total costs to a particular industry, while summing down columns would yield all-industry costs. (Benefits could possibly be presented in a similar fashion.) In addition to providing a more clear and accurate summary of impacts, spreadsheets can simplify the calculation of the present value of costs and benefits over time.

A tabular approach is also useful when impacts cannot be quantified in a meaningful way. A table could be used to present all positive and negative impacts of a proposed regulation. Another table could identify the various industries or affected parties that are expected to gain or lose.

FILING THE ECONOMIC AND FISCAL IMPACT STATEMENT (STD. 399)

Part 2

Every agency subject to the provisions of Chapter 3.5 of the Government Code (GC) is required to file with the Office of Administrative Law (OAL): a Notice of Proposed Adoption, Amendment or Repeal (*Notice*); the proposed text of the regulation; the Initial Statement of Reasons (ISOR); and other related documents. This information must be submitted to OAL at least 10 calendar days before the desired publication date in the California Regulatory Notice Register. [CCR Title 1, Chapter 1, Article 2, section 5].

Agencies must include with this submittal a completed and signed STD. 399 form for each proposed rulemaking. The form consists of two parts, an Economic Impact Statement and a Fiscal Impact Statement. It is not necessary to complete the Economic Impact Statement for emergency regulations. However, that statement must be prepared and submitted when permanent regulations are proposed simultaneously with an emergency filing.

The following are the steps that all agencies must follow when filing the STD. 399 form:

1. After an agency has completed the STD. 399 as fully and accurately as possible, the form must be signed by the Agency Secretary. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest-ranking official in the organization. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking.
2. A copy of the agency-signed STD. 399 must be transmitted to Department of Finance (DOF) for signature when SAM sections 6600 - 6670 require completion of the Fiscal Impact Statement. The DOF-signed STD. 399 should be returned to the agency for inclusion with the rulemaking documents that the agency must submit to OAL prior to the publication of its proposed rulemaking.
3. If DOF signature is not required, because the agency is not required to complete the Fiscal Impact Statement portion of the form, the agency must still submit the STD. 399 to OAL with the *Notice* and other documents required prior to the publication of a proposed rulemaking. DOF must receive a copy of any STD. 399 that is submitted to OAL. Although the form may contain only economic impact information, DOF may examine such information for its possible implications on fiscal impacts.
4. A copy of the STD. 399 must be transmitted to the Trade and Commerce Agency, Regulation Review Unit (RRU), at the same time the *Notice* and other required documents are submitted to OAL. [Executive Order W-144-97]. RRU is responsible for reviewing the economic impact assessments prepared by state agencies for their proposed rulemaking, and will carefully scrutinize the economic information in the STD. 399. (A further description of the role and responsibilities of RRU in the regulatory process can be found in GC §15363.6, Health & Safety Code § 57005 and on the RRU Web site: <http://commerce.ca.gov/regreview>.)

Agencies should also provide a copy of the *Notice*, ISOR, and proposed regulation text to RRU along with the STD. 399, since RRU requests and examines these documents for all proposed rulemaking.

If RRU subsequently submits written comments regarding the Economic Impact Statement in the STD. 399, or any other aspects of a proposed rulemaking, "...all state agencies and departments shall respond to the Trade and Commerce Agency's comments." [Executive Order W-144-97]. The agency response must be in writing, and specifically directed to RRU. In addition, an agency may send RRU copies of any written responses it provided to other groups and individuals.

GUIDELINES FOR COMPLETING THE EIS PORTION OF THE STD. 399

A. Estimated Private Sector Cost Impacts

The purpose is to identify the general types of private sector impacts that may result from the proposed regulation. Identifying affected parties and specific regulatory requirements is particularly important when there is a potential cost impact. Agencies should check the appropriate box(es) to indicate where impacts may occur. This step is critical to performing a complete and accurate economic impact analysis. Beneficial impacts on the private sector should be identified separately in item C. Estimated Benefits of the EIS. (The terms "impact" and "affect" are used interchangeably in the APA, and are synonymous terms in the EIS.)

Businesses and/or individuals are presumed to be directly impacted if: (1) they are legally required to comply with or enforce the regulation; (2) they derive some benefit as a result of the regulation; or (3) they incur some detriment as a result of the regulation. [CCR Title 1, Chapter 1, Article 2, sections 4 and 16]. All state agencies adopting, amending or repealing regulations, are required to identify and assess the impact of those regulations on businesses and/or individuals [GC §11346.3 and 11346.5(a)].

- A1 Check the box(es) that most closely describe the private sector impacts that may result from the proposed regulation. If the private sector will not be impacted in any way, check box “h” and briefly explain how this determination was made.

These impacts are identified in the APA, and are cited and discussed throughout these guidelines. However, for the purpose of selecting the appropriate box(es), agencies may want to review the following specific definitions in the statutes: small business [GC § 11342(h)]; performance standard vs. prescriptive standard [GC § 11342(d) and (f)]; and reporting requirements [GC § 11346.3(a) and (c)].

New or expanded reporting, record keeping and permit requirements typically impose costs on businesses and/or individuals. If box “e” is checked, these costs must be estimated in item B3 of the EIS.

- A2 Estimate the total number of businesses that are likely to be impacted by the regulation. If there are more meaningful indicators than number of businesses, such as business revenues or profits, provide a summary here and include a detailed explanation in the rulemaking record.

Provide a brief description of the type of businesses impacted. For example: “gas station” or “oil refinery” may be more descriptive of the impacted businesses than “petroleum industry”. Standard Industrial Classification (SIC) codes, which was replaced by the North American Industry Classification System (NAICS) in 1997, may also be used to designate the industry that best describes the predominant activity in which the impacted businesses are engaged.

Estimate the number or percentage of total businesses that are small businesses.

- A3 Estimate the number of new businesses that may be created, and/or eliminated as a result of the regulation. Provide a brief explanation, if necessary, including whether businesses may also be expanded or diminished. Although it may not be possible to precisely estimate the number, GC §11346.3(b)(1)(B and C) requires that the agency “assess whether and to what extent” businesses will be created, expanded and/or eliminated.
- A4 Most regulations are enforceable throughout California, but as a practical matter, they may impact only certain geographic areas. For example, a regulation concerning development on the California coast may not impact businesses operating in inland areas. Identify where impacts may occur, or if unknown, check “Statewide”.
- A5 If it is anticipated that new jobs will be created and/or eliminated as a result of the regulation, estimate the total number in each category by industry and/or occupation. Also note in the description of impacts if the regulation establishes requirements that restrict entry into jobs or occupations.
- A6 GC § 11346.3(a)(2) requires regulatory agencies to assess the extent to which a proposed regulation would impact the ability of California businesses to compete with businesses in other states. Other states or regions may gain a competitive advantage if businesses outside of California are able to produce goods or services at a lower cost than businesses in California. Describe the products or services that California businesses may find more expensive to produce. If the regulation will impact international trade, that information may also be described here.

B. Estimated Costs

In order to determine the economic impact of a proposed regulation, all costs should be identified and correlated with those who will bear the financial burden of the regulation.

The purpose is to identify all costs associated with the implementation of the proposed regulation. GC § 11346.5(a)(9) defines “cost impact” as, “... the reasonable range of costs, or a description of the type and extent of costs, direct or indirect, that a representative private person or business necessarily incurs in reasonable compliance...” with the regulation. Some examples of costs that should be considered are as follows:

- **Costs to Businesses.** The most direct and measurable costs to businesses are government fees, charges, and assessments. Compliance costs may be more difficult to estimate than fees, charges and assessments, but are often more expensive to businesses. Businesses may incur capital costs for the purchase of new equipment or structures. They may also incur operational costs, such as hiring additional staff; and, purchasing additional supplies. Depending upon the regulations, it may also be necessary for a business to hire consultants, train staff as to the operation of new equipment or new processes, or pay for testing laboratories or other professional services. Some businesses may be able to comply with the regulations using existing staff and resources. However when the staff and resources are used for regulatory compliance activities, they are unavailable to generate revenues for the business. This latter cost impact is generally referred to as an opportunity cost. One of the major opportunity costs is the expense of time delays. Not only are interest costs and other expenses incurred from the delay of business activity, but the business often loses opportunities in the market place that may not exist later.

Businesses also incur information and transaction costs. These costs reflect the time, and associated expense, of learning about the regulations, making informed decisions about equipment purchases or operational changes which may be needed, and preparing and maintaining any records required by the regulations' provisions.

- **Costs to Individuals.** The costs to individuals are often of the same type as for businesses, such as compliance costs, information and transaction costs, and the payment of fees and assessments. Individuals may also be affected by higher product prices, or a reduction in product choices or features, as a result of regulations.
- **Other Costs.** Regulations can impose costs that affect large portions of the private sector, or the statewide economy. Economic productivity may be reduced as businesses and/or individuals devote their labor, capital, and resources to comply with regulations. Regulations can change the operations and structure within an industry by raising costs and reducing the number of firms. Regulations can also alter existing production processes, products, and technologies, and make it more difficult to develop future products and innovations. Not all of the costs of regulations may be readily apparent. It is not known how many businesses do not get started, or the number of people who are not employed, due to excessive or poorly designed regulations. Large or intrusive regulations can actually override market forces in the economy. These costs, if known or anticipated, should be summarized, in narrative form, in item B1(d) of the EIS.

State agencies adopting new regulations, or amending existing regulations are required to consider the impacts of the regulations that may be incurred by businesses and/or individuals [GC § 11346.2(b)(5), 11346.3, 11346.5(a)(7,8,9), and 11346.9(a)]. Item B. Estimated Costs of the EIS is designed to facilitate an analysis of potential cost impacts.

- B1 This item requests an estimate of the total costs, both present and future, for all impacted businesses and/or individuals in California. Include those costs that have been separately identified in items B3 through B5. If future costs are expected, they should be discounted to present values using the methods discussed in the next two paragraphs.

It is not appropriate to simply sum the future costs. This approach ignores the time value of money. *Note:* The requirement for detailed cost information should be considered in light of the nature of the regulations. Regulations that implement minor technical changes in the law or have insignificant impacts may not require a present value analysis.

Present value analysis, or discounting, is generally used to convert income and expenses realized in different times to common units or present values. Discounting is therefore a fundamental tool for comparing costs and benefits accruing at different time periods. The mechanics of discounting are discussed in textbooks on Finance, or Cost-Benefit Analysis, under a chapter heading of Discounting, or with headings such as Present Value Analysis, Financial Calculations, Discounted Cash Flow Analysis, or Time Value of Money. Many calculators and computer spreadsheets have the appropriate financial functions, and accompanying instructions, necessary for discounting. The first step in discounting is to identify the timing and amount of each cost. The second step is to determine the appropriate rate to use for discounting. After these are determined, each cost is discounted over its respective time period to the present. The present in this case can be assumed to be the effective date of the regulation or when compliance is required. The discounted costs are then added with any other present costs to obtain the amount to be entered in B1.

Estimate the costs for the life of the regulations or for five years, whichever is shorter. Since most regulations last indefinitely, and the present value of future costs generally drops steadily over time, a five-year time span should provide reasonable cost information, while simplifying estimates of annual future costs. In addition, Executive Order W-144-97 that establishes this EIS also requires that proposed regulations undergo a sunset review at least every five years. If a different time period is more appropriate for specific regulations, that time period, and the agency's reasoning for its use, should be noted in the rulemaking record and used to estimate total statewide costs.

The discount rate represents a return that would have been generated if the money spent for compliance costs was invested. The actual discount rate used may vary depending upon the nature of the regulations. As an example, a discount rate may equal the interest rate of a security whose maturity approximates the life of the regulations. There are various published interest rates in newspapers and business periodicals that can be used by state agencies, as appropriate, to discount future costs.

Items B1(a) and (b) require an estimate of initial and annual ongoing costs for a small business and for a typical business. GC § 11342 provides the various sector-specific definitions of "small business". A typical business is one that generally represents the characteristics of those impacted by the regulations. Initial costs may include the cost of new equipment, staff training, costs associated with obtaining information about the regulations and their requirements, and other start-up costs. Under most circumstances, initial costs will be incurred in the first year following the effective date of the regulations. However, major regulations may result in start-up costs spanning a two or three year period. Estimate the average annual ongoing (recurring) costs for any 12-month period following the effective date of the regulations. A survey or sampling of affected businesses may provide valuable information regarding costs and other impacts.

Item B1(c) requires an estimate of the initial and ongoing costs that may be incurred by individuals. Initial costs may be the cost of an application, examination or licensing fees, education or training expenses, or special equipment or supplies. Ongoing costs may include, but are not limited to: fees; maintenance and service of items needed for compliance; price increases; barriers to entry such as increased education or examination requirements; and wage, employment or recreational opportunity changes. Individual means members of the general public, employees, applicants, students, taxpayers, property owners and any other natural persons.

The term “natural persons” is intended to distinguish impacts on individuals with personal interests from those whose business interests may be impacted. [GC § 11340.1(a) and 11346.5(a)(9) require an assessment of impacts on private persons].

Item B1(d) requests the agency to summarize any other broad economic effects of the regulation that the agency has identified. For example the regulations may result in: impacts on competitive markets, distribution changes, or loss of productivity. A discussion of such costs can be found previously in these guidelines, under “*Other Costs*.”

- B2 To the extent possible estimate the industries that will incur the majority of the costs reported in item B1, utilizing Industrial Classification code numbers whenever possible (see the previous discussion of item A2). Each industry’s share of total costs may be estimated in dollars or by the percentage of total costs.
- B3 Costs associated with reporting, record keeping, accounting, and preparing and maintaining other information and paperwork can be burdensome, especially for small businesses. Some costs that should be considered when completing this item are the expenses for hiring professionals to comply with the requirements. Also the dollar value of a firm’s management and staff time to prepare and maintain required records should be addressed. Estimates should also include costs incurred to obtain the information needed to understand and comply with the regulations. The estimated costs should be shown here and also included in item B1.
- B4 GC § 11346.5(a)(11) requires that the *Notice* include, “A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulations, determines that the action would have an effect.” It further states that agencies “...shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.”

Housing costs pertain to all dwelling units, regardless of the number of inhabitants or type of structure. Dwelling units include single-family homes, duplexes, apartments, condominiums and manufactured homes. Housing costs are generally impacted by a variety of factors, such as interest rates, construction wages, materials, land and land development expenses, taxes, insurance, and permits. Estimate the total increase in housing costs and the cost per unit.

- B5 Various GC sections require agencies to compare and explain differences between federal and state regulations. [GC § 11346.2(b)(6) and (c), 11346.5(a)(3)(A), and 11346.9(c)]. Although GC § 11346.2(b) only requires certain agencies to justify the cost of differing state and federal regulations, this item is designed to encourage all agencies to do so. Briefly identify the state-federal differences, if any, and discuss the need for the differences. Also, if there is legal precedence or authority cite the appropriate code section(s). To the extent possible estimate the costs associated with the differences.

C. Estimated Benefits

The purpose is to identify the amount of benefits, the timing and extent of the benefits, as well as the parties benefiting from the regulations. The quantification of the information requested is not specifically required by the APA, except when a proposed regulation by Cal/EPA, the Resources Agency, or the State Fire Marshal is different from Federal regulations and not authorized by law. [GC § 11346.2(b)(6)]. However, information on benefits is important, in part, because the California Legislature has found that “Substantial time and public funds have been spent in adopting regulations, the necessity for which has not been established.” [GC § 11340(c)].

Persons are presumed to be directly affected by the regulations if "...they derive from the enforcement of the regulation a benefit ...". [CCR, Title 1, Chapter 1, Article 2, section 16(b)(3)]. Small businesses are affected if they "...derive a benefit from the enforcement of a regulation...". [CCR, Title 1, Chapter 1, Article 2, section 4(a)(3)].

Prior to submitting the *Notice* to the OAL, agencies are required to assess beneficial impacts of regulations on business, including: the creation of jobs within California, the creation of new businesses, and the expansion of businesses currently doing business in California. [GC § 11346.3(a)(2) and (b)(1)]. Benefits should be quantified to the extent possible. A schedule of monetized benefits would assist in understanding the timing of benefits. Any benefits that cannot be monetized should be presented and explained.

Agencies are required to demonstrate by substantial evidence the need for a regulation. The evidence includes, but is not limited to, facts, studies, and expert opinion. [GC § 11349(a)]. The "necessity" requirement can be met, in part, by identifying any potential benefits that help to demonstrate the need for the regulation. Benefits can be any outcome that promotes well-being or an economic advantage to an individual or group. Some examples of benefits that should be considered when completing this portion of the EIS follow:

- Benefits can take as many forms as costs, although their nature will often be quite different. Most regulations have an underlying public welfare purpose, such as environmental protection, the management of natural resources, enhanced public health and safety, or consumer protection.
- Regulations to enhance health and safety, for example, may not only improve the quality of life, but may reduce medical expenditures and employee absenteeism costs. Regulations that increase reporting requirements may save well-informed consumers money.
- Many major regulations are intended to provide environmental or natural resource benefits. If it is determined that resources will be enhanced through regulations, their increased value should be projected. Regulations can also reduce environmental waste and cleanup costs, or prevent new pollution from occurring. Some regulations may generate increased revenues for resource-based industries, such as higher crop yields to farmers due to cleaner air. Resource protection, such as the preservation of natural areas, may result in various ecological and societal benefits. Resource benefits can be difficult to quantify, since many environmental goods and services do not trade in private markets. Nevertheless, it is important to assess their value to justify the potentially high costs such regulations can impose.
- Regulations can also create economic market benefits when they solve a problem that is not being addressed by private markets. For example, government may be the most appropriate party to establish consistent and universal standards for widely-used products or technologies. Regulations can also generate international consumer confidence in California goods, such as agricultural products, by ensuring quality and content standards. Once identified, economic market benefits from regulations can be quantified in a variety of ways, such as by estimating reduced production and transaction costs or increased economic activity.

C1 This item requests that the information on expected benefits be briefly summarized here.

When an agency is not clear about all potential benefits, it should consider that the primary economic justification for regulation is to address a market failure.

(Regulation may also be justified by some other compelling public need, such as to improve the efficiency of government.) The most common market failures include externalities, natural monopolies, market power, and incomplete or uneven information. An *externality* occurs when the action of one party imposes uncompensated costs or benefits on another party. (For example, oil spills that adversely impact commercial fishing.) A *natural monopoly* occurs when a market can be served at lowest cost by one producer, such as a local natural gas distributor. One or more firms exercise *market power* when they reduce their output below what a competitive market would sell, in order to increase their prices. *Inadequate or uneven information* can cause a market failure in a variety of ways, such as by reducing innovation, increasing market power to certain firms, or causing an inefficient allocation of resources.

- C2 When a regulatory agency is required to develop regulations to comply with a specific statute, the statute may identify the benefits that should result from the regulations. Labor Code section 6357 provides an example: "...the Occupational Safety and Health Standards Board shall adopt standards for ergonomics in the workplace *designed to minimize the instances of injury from repetitive motion*" (emphasis added).

Regulatory agencies may also have express or implied authority to develop regulations. This authority is power granted by the Legislature or the Constitution to a state agency to implement or enforce a statute, and includes the power to adopt regulations. This item requires the agency to indicate whether the regulations are implementing a specific statute or are based on the agency's broad authority to promulgate regulations. Space has been provided to allow the agency to briefly summarize the goal or policy the proposed regulations address and to provide relevant citations.

- C3 An attempt should be made to quantify benefits in monetary terms whenever possible. Benefits that cannot be quantified should be explained. Although it can be difficult to calculate the dollar value of benefits, it is generally possible to do so. For example, the quantification of benefits was a factor in federal decisions to reduce lead in gasoline. It was found that higher gasoline refining costs were offset by reductions in health care, automobile maintenance, and other costs, since lead emissions are toxic and corrosive.

There are a number of approaches to quantifying economic benefits. Different regulations may require a different approach, or a combination of approaches. The concept of willingness-to-pay provides one measure of the value of a benefit, since it represents the dollar amount that an individual places on a good or service, such as a safer automobile. Another approach to measuring benefits is to estimate the decrease in the cost of a good or service that results from a regulation. For example, a water quality regulation that eliminates the need for bottled drinking water provides a benefit by reducing expenditures for that product.

The amount entered in this item should include both present and future benefits. If future benefits are expected, they should be discounted to present values, using present value analysis. Discounting benefits to present values generally follows the same steps as for discounting costs. (See guidelines for item B1 for a discussion of discounting costs.) The final step is to add the discounted benefits with any other present benefits to obtain the amount entered on item C3 of the EIS.

The benefits should be estimated for the life of the regulations or for five years, whichever is shorter. Since most regulations last indefinitely, and the present value of future benefits generally drops steadily over time, a five-year time span should provide reasonable benefit information, while simplifying estimates of annual future benefits. In addition, Executive Order W-144-97 requires all proposed regulations to undergo sunset review every five years. If a different time period is more appropriate for a specific regulation, that time period should be noted in the rulemaking record and used to estimate total statewide benefits.

The present value of benefits (item C3 of the EIS) will be compared to the present value of costs (item B1), in item D2, in order to determine the net present value of the proposed regulations and any alternatives.

D. Alternatives to the Regulation

The purpose is to summarize the alternatives the agency considered, and to provide information that documents the merits and limitations of the proposed regulations and any potentially effective and reasonably feasible alternatives.

All state agencies are required to describe, in the ISOR, the alternatives considered and the reasons for rejecting those alternatives. Agencies are also required to describe any alternatives that would lessen any adverse impact on small business. [GC. §11346.2(b)(4)(B)]. Agencies must include in the Final Statement of Reasons (FSOR), “A determination with *supporting information* (emphasis added) that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the adopted regulations.” Agencies must also set forth their reasons for rejecting any proposed alternative that would lessen the adverse economic impact on small business. [GC § 11346.9(a)(4) and (5)].

The record of the rulemaking proceeding must demonstrate by substantial evidence the need for the regulations. [GC § 11349(a)]. As a result, when an agency uses its broad authority to promulgate regulations, the agency should consider any reasonable and appropriate alternatives.

- D1 This item is to be used by the agency to give a brief description of the primary alternatives that were considered, and why those alternatives were rejected. It is most helpful to regulated parties to identify alternatives early in the rulemaking process, and present them in both the ISOR and in this EIS. Early identification allows the public and policy makers to determine whether the proposed regulations are reasonable and appropriate, and whether other options were considered that could be less burdensome. However, if no alternatives were considered prior to submitting the STD. 399, briefly describe any attempts made to identify and evaluate potential alternatives.

This space may also be used to indicate whether any of the following more common types of alternative approaches were considered: not regulating; substitution of performance standards for prescriptive standards; alternative levels of stringency; different requirements for different segments of the regulated community; alternative effective dates of compliance; and/or market-based solutions.

The use of market-based solutions is a pragmatic and increasingly popular alternative to the traditional “command and control” (prescriptive standard) approach to regulations. Such solutions allow regulated parties to reach a regulatory goal by using private market incentives to influence behavior. For example, the purchase and scrapping of heavy-polluting cars, from willing private sector owners, could possibly reduce some air pollution at a lower cost than installing auto emission devices. Market-based incentives encompass a variety of strategies, such as targeted subsidies and the market trading of environmental permits or emission allowances.

- D2 The comparisons requested in this item are not specifically required by the APA. However, agencies are required to assess impacts and to select the least burdensome alternative that carries out the purpose of the regulations. This item, which incorporates standard economic practices, allows agencies to demonstrate that an economic analysis of potential alternatives was performed. The present values of costs and benefits were requested in items B1 and C3, respectively, of this EIS. These values should be entered here for the “Regulation”. Estimates of the benefits and costs of alternatives should be prepared in the same manner, and presented here for each alternative considered. The benefits from alternatives and the proposed regulations may be similar, to the extent that the expected outcomes are the same.

The concept of maximizing net present value to determine the best regulatory approach is based upon the premise that benefits should fully compensate for any costs. Theoretically, those who benefit from the regulations could compensate those who bear the costs, and still be better off as a result of the regulations. In practice, the incidence of benefits and costs is often on totally different groups, so that the parties paying for regulations are not compensated in any way. Distributional effects are an important factor in any economic impact analysis, and should be analyzed and discussed in the ISOR and/or FSOR along with net present value.

If the present value of any benefits and costs cannot be quantified, enter "see below", and discuss the issue in item D4.

- D3 An impact analysis that compares benefits and costs is not a fixed rule or precise formula that automatically overrides all judgment concerning proposed regulations. Instead, such analysis provides a methodical approach for organizing information and evaluating alternative courses of action (or inaction). The cost and benefit data that go into an impact analysis can be difficult to obtain, and are often imprecise. As a result, it is not unusual for estimates to be presented in ranges, or for best and worse case scenarios to be developed that reflect the uncertainty behind the assumptions used. Uncertainty is also basic to nearly every analysis, and its presence and implications should be analyzed and reported as part of any impact analysis.

This item seeks information concerning the strengths and weaknesses in the quantitative benefit and cost data previously presented for the proposed regulations and alternatives. As appropriate, responses should also discuss any special quantitative techniques used to develop the data. For example, cost-effectiveness analysis may be appropriate when benefits from competing alternatives are the same, or when benefits have been specified by statute. (Cost-effective analysis can also be used to compare alternatives with identical costs, but different benefits, to identify the alternative with the largest benefits.)

An inability to quantify benefits and costs is a quantification issue that should be summarized here as appropriate.

- D4 The Legislature has expressed its preference for performance standards over prescriptive standards. [GC §11340, 11340.1]. Performance standards tend to give regulated parties the flexibility to meet regulatory goals in a more cost-effective way. Such flexibility is particularly important given the rapid changes in technology and information. Prescribed practices can quickly become costly and out-of-date as newer approaches are developed. Prescriptive standards can also give a competitive advantage to larger or more established firms and may discourage innovation.

GC § 11340(d) states: "The imposition of prescriptive standards upon private persons and entities through regulation where the establishment of performance standards could reasonably be expected to produce the same result has placed an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals." Other GC provisions specifically require agencies to substitute performance standards for prescriptive standards, if they are as effective and less burdensome, and require agencies to consider performance standards as an alternative. [GC §11340.1(a) and 11346.2(b)(4)(a)]. The definitions of the terms "performance standard" and "prescriptive standard" can be found in GC § 11342(d) and (f), respectively.

This item in the EIS is to be used to explain what performance standards were considered and why they were rejected. If the agency determined the proposed regulations represent a performance standard, it should briefly explain the basis of this determination. In addition, if performance standards were not considered as an alternative to the proposed regulations an explanation must also be provided.

E. Major Regulations

The purpose is to summarize the rulemaking requirements for major regulations proposed by any Cal/EPA board, office or department (BOD). [As required by H&SC § 57005 (Senate Bill 1082, Statutes of 1993)]. A "major regulation" is any Cal/EPA regulation that will have an economic impact of more than \$10 million on California businesses.

Each BOD within Cal/EPA must evaluate submitted alternatives before adopting any major regulation. The BOD is required to "...consider whether there is a less costly alternative, or combination of alternatives, that would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements." Pursuant to H&SC § 57005(c), Cal/EPA has produced *Cal/EPA Guidelines for Evaluating Alternatives to Proposed Major Regulations (Guidelines)* for BODs within the agency to use in the evaluation of these alternatives. The guidelines provide additional information on the guidelines presented in this EIS.

The SB 1082 requirements for major regulations apply to Cal/EPA agencies after a 45-day notice has been issued, and comments have been received from the public. However, Cal/EPA agencies usually evaluate alternatives to major regulations before the 45-day notice is issued. Such alternatives would most likely be generated by Cal/EPA staff or from public workshops or other events held prior to filing of the *Notice* with OAL.

- E1 If the cost of the regulation exceeds \$10 million, the regulation is considered a major regulation. Check the "Yes" box and complete the rest of E. Major Regulations. Otherwise, check the "No" box and then complete the FIS portion of the STD. 399 as appropriate.
- E2 As stated in GC § 11346.5(a)(7)(c), any affected party may submit one or more alternatives to the proposed regulation that would lessen any adverse economic impact on businesses. H&SC § 57005(a) requires that the proposing BOD shall evaluate these submitted alternatives and "...consider whether there is a less costly alternative, or combination of alternatives, that would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulation." A BOD only needs to evaluate submitted alternatives that meet all the foregoing criteria.

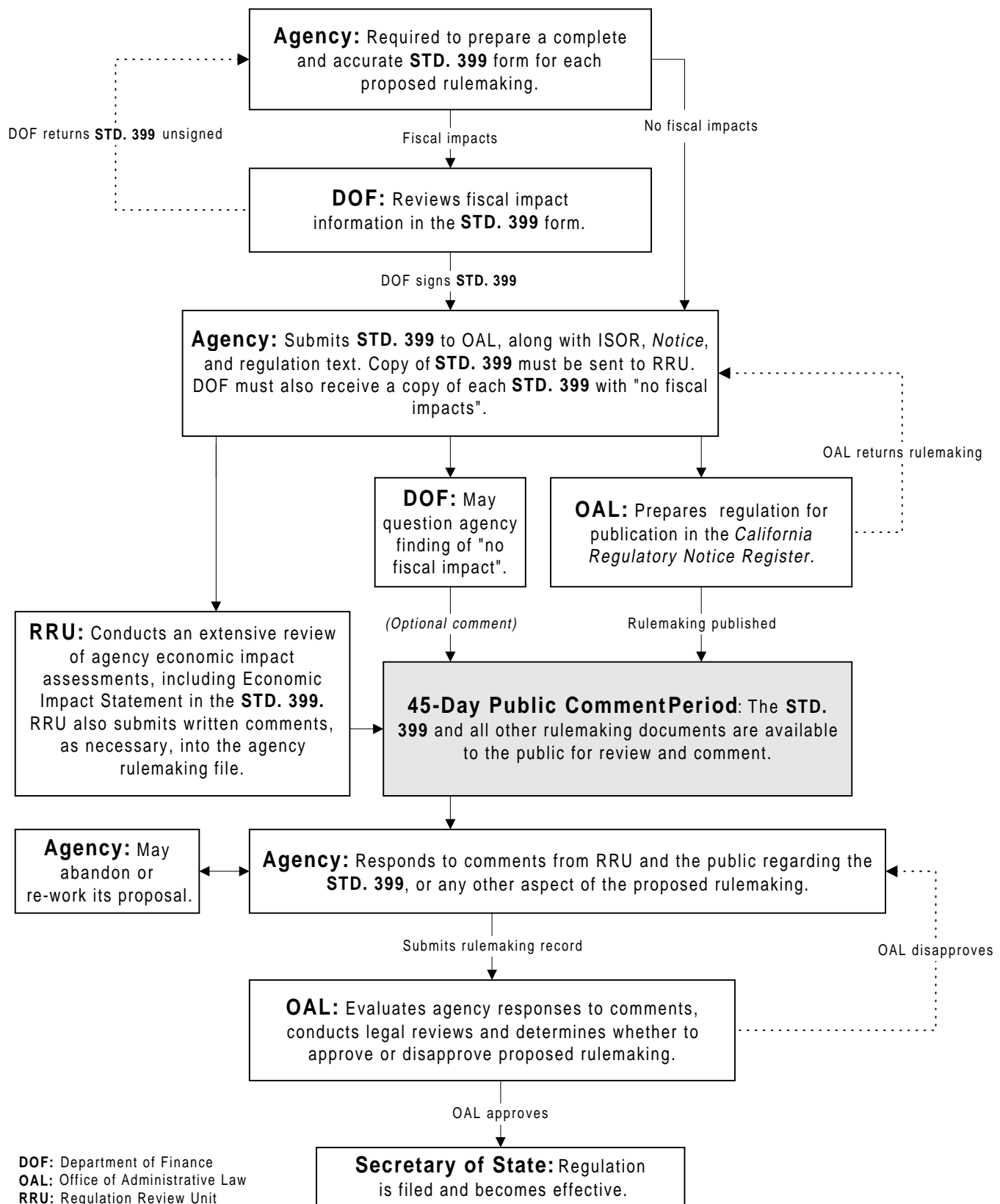
In determining whether an alternative is "equally as effective", Cal/EPA BODs should consider all relevant factors, including, but not limited to, the enforceability and the technological feasibility of the proposed regulation and alternative.

The cost analysis of the proposed regulation and alternatives should be conducted using the incremental cost analysis methodology described in the *Cal/EPA Guidelines* document. This methodology should also be used to perform an incremental cost-effectiveness analysis for each alternative or combination of alternatives submitted to the BOD.

Enter a brief description of the two best alternatives for which such an analysis was performed. The alternatives selected for comparison would generally be those with the lowest cost-effectiveness ratios.

- E3 The *Guidelines* also provide a methodology to compute cost-effectiveness ratios for the proposed regulation, and each equally as effective alternative or combination of alternatives, over the time period associated with the regulation. This item in the EIS should contain the ratios computed, as well as the total cost of the proposed regulation and alternatives. (The detailed results of the cost-effectiveness analysis should be included in the rulemaking record.)

The STD. 399 and the Rulemaking Process



**The Regulation Review Unit
California Trade and Commerce Agency**

801 K Street, Suite 1700

Sacramento, CA 95814

Tel: (916) 322-3539

Fax: (916) 322-0669

Web site: <http://commerce.ca.gov/regreview>

